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HUMAN RIGHTS.\*

AFTER enumerating the human desires and propensities, according to the ordinary phrenological list, Counsellor Hurlbut thus proceeds: "Wherever Nature has ordained desire, she has spread before it the means of gratification. From this we infer the *right* to its indulgence, and hence—the *rights of man*." Now we certainly shall not controvert the position, that man has various desires, nor that Nature, or whatever else we may choose to term it, does, in the main, intend the gratification of those that are good—while, at the same time, we are firmly convinced from experience, observation and the Scriptures, that, however he may have come by them, man has some bad desires, which never ought to be gratified under any circumstances. Neither shall we deny that it is one and an important object of political society, to render the proper enjoyment of the objects of innocent human desires more easy than it would be in that condition, which is generally, although, as we agree with our author in thinking, erroneously styled, "The State of Nature." We would also remark here, in passing, that doubtless a large and even the largest part of the work, which has occasioned our remarks, is irrefragable and unanswerable truth. Indeed it would be a very strange work, either on moral or political science, that

did not, in its details, contain more truth than error. What we chiefly complain of is its defect—its want of that without which, all this amount of truth only constitutes, as a whole, the more egregious and pernicious falsehood.

Man is a being of desires. True; but then he is also something far more than this. He has ends, if the first-mentioned can be called an end at all, immensely higher than this. He is a moral being—a religious being—a rational being. He has relations to objects out of and above himself, almost infinitely transcending those aims, be they high or low, refined or groveling, which terminate in himself and his own gratifications. He is not created and placed upon earth to promote his own happiness, by which *this sect* ever mean the gratification of his *desires*; but, as we are told in a little treatise, which was once taught in some of our common schools, before the introduction of Combe's Constitution of Man, "his chief end is to glorify God and enjoy him forever."

The same may be said of that system of mental philosophy on which this political theory professes to be grounded. We would dismiss all further consideration of this part of the scheme with the single remark, that all the phrenological *faculties*, as they are most unmeaningly styled, are

\* Essays on Human Rights and their Political Guaranties. By E. P. Hurlbut. Greeley & McElrath. (Continued from page 340.)

in truth *propensities*, and nothing more. This appears from the fact, that in the modes of argument and illustration generally adopted by the principal writers and lecturers, they are all treated alike. All are said to be *gratified*; all have their peculiar *gratification*; and the business of that mysterious *man*, whose residence we endeavored in vain to find, is said to be, to assign to each the just and equal enjoyment of the objects of its own propensity. What they absurdly call Causality, is, on their own showing, only a propensity to reason—not reason itself. A very great fool may possess it in its largest developments; and nothing goes farther, with us, in producing at times some slight faith in phrenology, than some undoubted facts connected with this phenomenon. There are to be found many men, who certainly have a strong propensity to dabble in the technics of logic—to talk profoundly of cause and effect, and natural laws—to be constantly putting forth the most shallow truisms as though they were actually the results of the deepest philosophical investigation—while, in most cases, they are utterly incapable of defining aright the simplest and most elementary terms with which they make so wondrous a display. We have seen this exemplified in more than one phrenological lecturer. Hence, when this organ of causality is supposed to be excited, mesmero-phrenologists most ridiculously represent the patient as making all sorts of calculations and reasonings on all sorts of subjects—in the same way as a motion of the finger is said to fill the cranium of the most profane wretch with any quantity of religion the operator may desire to exhibit. So, likewise, the organ of language is only a propensity to talk, whether sense or nonsense makes no difference; very much like what, in the corresponding political scheme, are styled the rights of free inquiry and free discussion; which simply mean the rights of holding all sorts of opinions on all sorts of subjects, and of forcing them upon the hearing of all sorts of people. The unvarying mode of explanation adopted by phrenologists shows conclusively, that they regard them all as *feelings*, all as excitements of the same animal nature; or, in other words, that man is wholly a being of higher and lower desires, to which everything is to be subservient that in other systems might be deemed truly moral, intellectual, and divine.

The fundamental rights of man, according to Counsellor Hurlbut, (page 15,) are:

1. The Right to Existence, and
2. The Right to Happiness.

In respect to the first, he admits that "The Creator may withhold or bestow it at his pleasure;" but it is said "to be inconsistent with his benevolence, to give the former without the latter." Man, therefore, has a qualified right to live, and an absolute right to be happy. On page 16, he says:

"Life is bestowed, by the Giver of all good, for the purpose of happiness. If so, to live and be happy is our *right*. The right to be happy would be vain, without the means of becoming so. The Creator, therefore, has endowed man with certain innate desires, emotions and faculties, the gratifications of which are the means of his happiness. Here is the consummation of man's rights—the *right to gratify his natural desires*."

Again, page 17:

"As well may man's right to exist be denied, as his right to 'move and have his being' in the manner pointed out by the laws of his organization. If it is obvious, from his physical structure, that he is destined to walk erect, who may deny his *right* to do so?"

We certainly shall not deny Counsellor Hurlbut's *right* to indulge his logical propensity, or rather, the right of his organs of Causality and Comparison to indulge themselves, if a majority of the other organs consent, in this kind of reasoning; but really, after all, what does it amount to? There are many pages more, in the same strain, containing positions true enough in themselves—yea, the veriest truisms—and yet, as we have said, constituting, collectively, a most egregious and pernicious falsehood—if it is meant to be asserted, that there is no other ground or ultimate reason in the organization of political society, than the most easy and effectual mode of gratifying human desires.

"Man has a right to be happy." That may be, if he is virtuous. Or, to expose the baldness of the sophism, by putting it into its proper language: It is *right* that man should be happy, if he discharges aright his duties, and does nothing to make himself miserable. But then, has it been proved, or can any of this school ever prove, that the great and final design of man's creation is to gratify his desires,

or to be *happy* even in the best and purest sense? This, we say, is not proved, cannot be proved, and is by no means to be taken for granted. Revelation certainly holds no such language. The most spiritual philosophy teaches us, not only that the end of existence must be something else than happiness, but also that the recognition of such higher aim is essential to happiness itself; or, in other words, that true happiness is ultimately destroyed by being raised from its subordinate position, to be the end for which we live. Experience itself might satisfy us of this, even without the guidance either of revelation or philosophy. Happiness inevitably perishes when a supreme selfishness, be it groveling or refined, dark or enlightened, pursues it as the great purpose of existence.

It is because there is a higher aim, that ranks and degrees are introduced among the desires or means of gratification themselves. If happiness were, in itself, the end, there could be no difference, except what arose from degrees of intensity. The most vulgar sensualist—although, in that scheme, all would be, in a certain respect, sensualists—might claim as high a rank, and as good a right to indulge in his peculiar pleasure, as he who affects to be an Epicurean of a nobler sort.\* If society and government are established for no higher purpose, he might demand that the laws should have equal, if not special, reference to his favorite propensity, and make it, equally with others, the object of their protecting care. It is only when we admit, as belonging to human nature, a morality which is something more than the gratification of a blind sentiment, and an end of existence higher than happiness, that we get any real ground for making a difference, otherwise than one of intensity, between subordinate desires and aims of life. We only get a true measuring rule, when we estimate them according to the degree and manner in which they contribute to

this superior end. Compared with themselves alone, there can be no true subordination among the members of this psychological democracy. When we have something final, and that final reaching to something out of human nature itself, then everything falls into its proper place. Without this, all pleasures must share alike, except as they differ in intensity, and no one can consistently be called to yield the predominance to others.

But here comes another great difficulty. How are all these desires to be gratified, without interfering with each other, both in the individual man, and as regards different individuals in the same society? Mr. Hurlbut, to our great surprise, utterly repudiates the old doctrine of compromise and surrender, as it may be styled. He says, page 25:

"It has been a favorite doctrine, that the individual substantially bargains with society, when becoming a member, by surrendering a portion of his *natural rights*, for certain *acquired rights*, or advantages which the laws of government can confer. This doctrine has never been well defined. It is the apology of tyranny for the usurpation of human rights. What proper benefit government assumes to confer, you had a right to before; so that, in fact, the supposed legal benefit is but your natural right, and you thus retain one right as a compensation for the loss of another. Let us close the door to this tyranny. Let us *prove* that nature confers all rights, and that the only business of the law is to protect them."

And, a few paragraphs after this, he does proceed to prove it in an argument, which, although it may lack somewhat of the rigid consecution of that scholastic and pedantic Aristotelian logic which George Combe has exploded, must certainly be regarded as a wonderful effort of that reasoning *propensity* which the author proceeds to gratify, p. 26:

"Let our appeal be to the *natural laws*. Let us hold on to our humanity. Who can rise superior to the laws of the Creator,

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\* Even a heathen might teach us better than this. Let us hear the noble Tully: Quare aliud aliquid, Torquate, hominis summum bonum reperiendum est. Voluptatem bestiis concedamus. In bestiis erunt humanarum quædam simulacra virtutum? in ipsis hominibus virtus, nisi voluptatis causa, nulla erit? et homini qui ceteris animantibus plurimum præstat, præcipui nihil datum esse dicemus? Ad altiora quædam et magnificentiora, mihi crede, Torquate, nati sumus. "Wherefore, O Torquatus, we must find something else as the highest good of man. Let us yield pleasure to the beasts. Shall there be in them certain resemblances of human virtues; but in men themselves shall virtue exist only for the sake of happiness? In man, who so much excels the other animals, shall we say that there is, in this respect, no preëminence? Believe me, Torquatus, we are born for higher and more glorious things."—Cicero de Finibus, ii. 23.

and dictate the surrender of a single human right? A king? And why a king? He is not a product of Nature, but a monster born of ignorance and weak submission. A parliament? What doth a parliament represent but the genuine rights of humanity? these rights gave birth to the parliament, and by blotting them out, it would extinguish itself forever. A surrender of human rights!! Who stands up before man and Heaven to receive the dreadful sacrifice? A man? He dare not *as man* attempt the rash and wicked deed. But government—*government*—may swallow up all rights! And what is government in its very nature, but the instrument adopted by mankind for the declaration and defence of the rights of humanity?"

But really, and in spite of the above most powerful demonstration, we had supposed that there was some theoretical truth, at least, in this old doctrine of compromise and surrender. It was never a favorite with us, because it savored too much of that fiction of a social compact, and because it was liable to the same objection with our author's scheme, namely, for its negative defects, or want of regard to the highest end of government, rather than for any positive error. It has certainly seemed, and does yet seem to us, that there are some things, which a man might *righteously* do—that is, would have a right to do—out of society, (if he should ever be in such a state,) which he could not righteously do in society. He might, for example—at least so it seems to us—hunt in every mountain to which his inclination directed him; he might fish in every stream; he might take wood to shelter himself from every forest. But this he cannot do in society where separate property is established by law. Again, there seem to be certain rights existing in a State, which must have been conferred by it, and which could not be exercised in what is called the state of nature, for the plain reason, that it is not possible for them to exist in such a condition, or to have any reality at all out of society. Of this class must certainly be the right to vote, and the right to hold office. But perhaps it may be said, that the germ of such a right, or what may be styled its potentiality, previously exists, and that, therefore, society is necessary, not to confer, but to create a state of things in which this natural right may be exercised. Still, it may be maintained that these natural rights last mentioned, have no *ends* which rest in Nature, but are only for the protection of society itself. And

so we come round "full circle," as Mr. Emerson would say, to the unavoidable conclusion, that "government is only an instrument adopted by mankind for the protection of rights," whose only end and design is the protection of government.

"Let us prove, says our author, that Nature confers all rights." But would it not be best first to analyze and understand the proposition? Nature, then, confers all rights—that is, whatever a man has a *right* to do he does *naturally*. In other words, whatever it is *right* that a man should do, is agreeable to Nature. Nature means man's individual condition in connection with the state of things in the universe around him. According to some writers on moral philosophy who are great favorites with this school, *right* is adaptation to Nature, or this very *fitness of things*. In other words, it is *vivere secundum naturam*, as some of the old sceptics said. And so our equation, from which we expected some most profound result, finally runs out,  $x=x$ ; or, in other words, terminates in the sage proposition—that man has a *right* to do anything which is agreeable to the fitness of things, that is, which it is *right* that he should do. This certainly is philosophy made easy. When all propositions are reduced to this state, there will certainly be little controversy among men on abstract questions. It may be taken, however, as a good illustration of the before-noted distinction between reasoning itself, and a blind propensity to reason. To be serious, it is the direct result of using words without any definitive meaning; and we hazard nothing in saying, that more than half the high-sounding assertions of this book might be reduced to truisms or identical propositions, in the same way.

Man has a right to do many things undoubtedly; but he has also something more than rights. He has duties too—duties to himself as existing in his individual state—duties in his family state, in his social state; duties transcending all these—connecting themselves with the infinite and eternal, and yet, at the same time, duties which society must regard even on the utilitarian principle; because, although they have reference ultimately to the highest spiritual good, they also form the support from which all below is suspended. They are the duties from which all the inferior *rights* and relations derive their true sanction, and all real stability; so that as the higher is lost



sight of or degraded, the lower must inevitably fall in the same proportion.

In this way it may be maintained, that even the physical well-being of man is dependent from something higher than itself, and can only be properly secured by keeping in view those spiritual interests, which, by this *new sect*, are regarded as entirely without the cognizance of political society. In this sense we are willing, for the sake of argument, to adopt and reason from the utilitarian theory. It is true, but not the whole truth. If it is supposed to have reference to the highest good of man, in distinction from that subordinate thing which is styled his happiness, and which can only be permanently secured by keeping the eye fixed upon the loftier principle—then we cordially adopt it as our philosophy. But this use of the term utility, may perhaps be regarded as involving a misnomer. Thus viewed, it might seem to run out of itself into something of a higher nature, and requiring a different name. In other words, the ultimate utility is that, which, by linking itself with something above, thus secures firmly all below. But we may take lower ground still. Admit that the State is designed only to promote the highest good of man, regarded solely in his earthly relations. Even then might we contend, that government, if it would properly conserve this, must also have respect to something higher; if not for its own sake, and as an end in itself, yet as essential to the preservation of that which this lower scheme itself affirms to be its legitimate object. Such a respect for the higher, not as an end in itself, but as a means to something *below* it, would not, and could not, indeed, be a true regard, and would, therefore, ultimately fail of the effect intended. As when religion, or, to take a case more applicable to our own country, when that famous morality which is such a favorite although undefined topic with our haranguers and lecturers on popular education, and which is so often and so unmeaningly set forth as the only guaranty of our republican institutions,—when this, we say, is recommended and cherished by law, only as the great means for the protection of property and the maintaining of order, it is no longer truly religion or morality, but a refined species of political economy, a moral circulating medium, which, although at first strained up to an apparently high standard of value, must necessarily and constantly depreciate; showing that, like

the objects it is designed to protect, “it is of the earth earthy,” and can therefore derive no true sanction from the Eternal and Immutable.

Although this must inevitably be the case with every attempt so to invert the order of things, as to make the higher a means to the lower, yet as against the sect we are opposing, the supposition may be admitted; and then we contend, that even on the Bentham or utilitarian scheme, their doctrine of inalienable rights derived from nature, and having regard solely to happiness and the gratification of desires, may be utterly overthrown. Even on this ground, there can be no such inalienable and indefeasible natural rights, aside from the utilities of society, whether regarded as higher or lower.

Amid all the cant in which society at present abounds, nothing is more common than to hear men declaim against the study of language or of words, as opposed to what they are pleased to style the knowledge of things. No man has been more distinguished for this contemptible sophistry, than that quack of quacks, George Combe. Without wishing to run into the opposite error, we would, nevertheless, venture to assert, that there is nothing which, at the present day, would be productive of greater advantages to moral, social and theological science, than the careful analysis of the common elementary terms employed in them. We refer, for example, to such words as nature, right, rights, duty, property, State, government, law, punishment, liberty, slavery, &c.; from the abuse, or rather, from the use of which in senses entirely different from what they have borne since the first origin of language, there is arising a confusion, threatening to throw all modern institutions into utter disorder.

Among other examples of this, no one, perhaps, has been the cause of more mischief, than the complete separation that has, at length, come to take place between the adjective *right* and the noun *right*. While the modest adjective is confined to the enunciation of what are generally regarded as the simplest moral truths, having in themselves nothing of the profound or philosophical, the usurping noun has become the great weapon of the political sophist, the declaiming demagogue, and the spurious reformer. Hence the unmeaning distinctions of rights, which so much abound in certain writings. We have natural rights, and

civil rights, political rights, rights of humanity, rights of women; and all distinct from moral rights, or *the right to do right*, and abstain from wrong. These rights are spoken of as absolute in themselves. They are styled inalienable, and indefeasible, without reference to any moral considerations involved in their exercise, or any expediency by which the morality of such exercise might be determined.

There is nothing which we more firmly believe, than that there is an eternal principle of right, irrespective of all expediences or utilities, antecedents or consequences; but when thus regarded, it has reference to ultimate and absolute states of soul. In its applications to acts, or outward manifestations, we must have respect to the lower considerations. Benevolence, for example, is always right, malevolence is always wrong; but this cannot be said of actions. They have no unvarying moral character; and nothing can be more irrational than to attempt to lay down an absolute rule respecting the right or wrong of any acts or relations in the abstract. That we should live for the glory of God, primarily, and, in subordination to that, for the highest temporal, spiritual and eternal good of our own souls and the souls of others, is absolute *right* or *righteousness*, which can neither yield to, or be modified by, any expediences. In the application, however, of this absolute righteousness, and in determining the best mode of carrying out its manifestations in acts, expediency and utility do come in; and that moral agent who chooses to act without reference to them, does so at the peril involved in the highest responsibilities.

At all events, we have a right, or it is right for us, to assume this position, in reasoning against those who adopt the utilitarian theory, which we have admitted contains the truth, although not the whole truth. It is a theory, too, into which our author ever and anon falls, although he sets out with another scheme of what he styles natural or absolute rights. There is hardly a page in which he does not forget his phrenological theory, and argue somewhat rationally in favor of or against certain political privileges or disadvantages, from the benefit or injury they produce to society. Whenever, however, this ground is taken, the absolute right is gone at once; the mischievous noun is merged in the adjective, and the question is not—what is the abstract right independent of relations and

circumstances, but what is right, and what ought to be done, in a given state of things.

In determining this, we may adopt a higher or lower standard of utility; but whatever it may be, no absolute right can be allowed to stand independent of its measurement and decision. Man has no right to live, even, if it is not right that he should live; and it is not right for him to live, if his life is in the way of that highest good which the State proposes to itself.

Disavowing then, as we do, the utilitarian theory, which is such a favorite with most political writers, or, rather, holding it to be subordinate to a much higher system of truth, we will, notwithstanding, exercise our right of employing it against its own advocates, or against those who actually maintain it, and are continually resorting to it, although deceiving themselves with the undefined and indefinable term Nature. Let us then consider the mode of its application to those rights about which so much noise is made, as being natural, absolute, inalienable, indefeasible, &c. We will commence with one which may be justly styled one of the lowest; because, instead of having anything final in itself, it is only a means to a means. Let us suppose, then, that the State is in existence, whatever may have been its origin; the body politic is formed and grown; we have that *whole*, the good of which, and of its parts, distributively and collectively, is to be our standard of utility: the question arises—whether all shall have a voice in the making of laws, or a right to vote in the choice of rulers. Shall there, for example, be a property qualification, and shall an interest in the soil be deemed requisite to entitle one to the privilege? Here steps in our man of abstract rights, and says that no such question can be tolerated. Man has an absolute right to govern himself and choose his own rulers. He appeals to Nature. He will, perhaps, tell us Franklin's famous story of the man with the dead and living jackass, and ask with an air of triumph, as though he had really proposed an argument, whether the right of suffrage is in the man or in the jackass. We never had any exalted opinion of Franklin, either in his religious or political character; but we would simply remark here, in passing, that this old threadbare anecdote is altogether unworthy of him. If he was ever the author of it, it only shows

that he took a very common-place and superficial view of this very difficult subject. We have no hesitation in saying, that in a political point of view, a man with a jackass is, in some respects, more likely to be a better citizen, if not a better man, than the same person without a jackass. But this constitutes a very small part of the great question involved: Is the proposed good of society more likely to be advanced, by restricting the exercise of voting to those who have a deeper interest in the preservation of the franchise, and by holding out a laudable motive for the acquiring of this interest? It is simply an inquiry as to what will best conserve the true interests of the State. This question of suffrage we do not pretend here to decide, but only to point out what seem to us the rational grounds on which the decision should be placed, and to protest against the absurdity of regarding it as a natural and abstract right.

That property, as one of the objects of the State's protection, should be represented, is a position certainly entitled to some consideration, although this may be in itself far from conclusive as a ground of suffrage. The same may be said of it as a test—although a very imperfect one—of the possession of superior intelligence. There is, however, an argument of a higher rank, derived from what might be styled the moral effect of a freehold interest in the soil; especially one requiring residence as a condition of the franchise. We might regard it as productive of that love of home, which is the nursery of so many virtues, in opposition to the unsettled, roving disposition, so fruitful in crime. We might view it as one great cause of a more pure and patriotic love of our institutions, or as the main source of that household and family feeling, which is so eminently conservative in its nature. We do not assert, and our present argument by no means requires us to assert, or prove, that these, or many others like them, are sufficient positively to decide the question. Neither do we say but that the weight of argument may be strongly the other way. We are aware of the intrinsic difficulties that surround almost any view of this subject; but the considerations advanced are certainly sufficient to show that suffrage is no indefeasible or abstract right, independent of a wise expediency, but a question of fact, to be decided by all the lights of reason and experience. It is no such abstract right

that its bare denial to any particular portion of the population, should, of itself, be a ground of revolution, the same as though life, or liberty, or their due security, had been unjustly invaded.

If it can be made out that the right of voting may be rendered too cheap—that limitations upon it are necessary for the order and stability of the State—that the true good of the whole, even of the disfranchised, is most likely to be effected by denying universal suffrage—then it follows that it is not *right* that all should vote; then all have not a *right* to vote; then some have no *right* to vote. This is the simple course of the argument, when reduced to logical form—simple, we say, as elementary political truth—and yet, in its application to existing circumstances, requiring the most careful investigation of facts. We dwell on this, because, plain as the real truth is, the public mind, in our country, has been utterly perverted by this doctrine of natural right, and the corresponding belief that there is an absolute title to the elective franchise, irrespective of any regard to the good of society. "If one man has a right to be a king, all are kings." Almost all the thought and reasoning on the popular side of this most important question, may be summed up in this short formula, which our author seems to regard as so conclusive a specimen of logic.

"The book before us regards suffrage as one of those natural rights." p. 108. "The right to govern himself, is one which a man cannot even surrender." p. 108. Again he says:

"His voice must be heard in the State, for he is one of the many persons who constitute it. What was good for one man, is good for all. All shall declare it, and all shall maintain it."

Here all is put upon the ground of natural rights—rights which every man possesses as man, and as being of the same kind with his right to exist, or to be a man. But the real Nature will have her way. There are times when the innate common sense in every man's mind will prevail over theory. Hardly a page elapses, before we find the writer himself talking of limitations and expediency. He prescribes twenty-one years as the *presumed* age of discretion; but who is to presume this? or who gave those above a certain age, any authority to limit the *natural rights* of those who are under? May it not be contended, with much plausibility, that the unexampled

progress of the species in our day ought to relax some of those antiquated institutions, which were adopted in the comparative minority of our race, and transfer to an earlier time the period of political action? Why should this age be any longer required, when we have already a young democracy, claiming to be so much wiser than their democratic progenitors? There is nothing absolute here. The many thousand votes to be found between the ages of eighteen and twenty-one years, might be very convenient to some political party just lacking them to make a majority; and its demagogues might very plausibly contend, as others have done, that there is more honesty, more purity, and more generous and high-souled patriotism at the former than at the latter period of life.

Again, the author would confine the exercise of the right to "those who have the intelligence and the *moral impulse* to prescribe and observe the rule of right, or whose *organization* would lead them to be conservative of rights, rather than to aggress upon them;" page 109. These he rather wildly estimates at one-half per cent., or five in a thousand, of those adult persons, who can read. To determine who possess the imperfect *organization*, we must of course call in the aid of the manipulations of the phrenologists, or the decisions of those other organizations that assume—by what right we know not—to be more perfect than the rest.

If it is said, that there must be some *tests*, and that, therefore, in these *cases*, we must be governed by the dictum of common sense, we answer—True, most true. It is to this very test of common sense, we wish to bring the doctrines of this school. But then, what becomes of the abstract, absolute, and inalienable right, which exists in an inchoate condition in a state of nature, and which a man never surrenders in society, or commits to the keeping of those who assume to judge of his age or intelligence? We have taken extreme cases. But extreme cases are those by which principles are ever best tested; and sometimes, in consequence of the mist in which truth is involved by sophistry, it is the only way by which error can be made palpably apparent. It is to drive out this false and yet inveterate notion of absolute or natural right, that we resort to propositions so simple as to be almost regarded as

truisms, and to statements so extreme that they may be seen at once to involve the opposing absurdity. We want to force these men of absolute and inalienable rights to talk about expediency, and common sense, and the necessity of some limitations in extreme cases; because the moment they get upon this ground, their absolutism is as utterly gone in principle, as though they had resorted to the highest freehold qualification. That which is absolute can have no limitation. Our opponents on this question must steer between Scylla and Charybdis. If they depart a hand's breadth, either way, from their assumed natural right, they are upon grounds which, followed out, must lead to higher expediencies, and still higher expediencies, until they arrive at the position on which we would take our stand, namely—that government is not merely a creation of the governed, (except in the lowest physical sense,) but a divinely appointed means for man's highest physical and moral good. The propriety of the freehold qualification, too, as well as sex and age, presents a question of a sound expediency. It was a question likewise about which our fathers, those enlightened advocates of rational liberty, had but little difference of opinion. The new sect would say, that they lived in too close a contiguity with the British constitution, and had not yet become released from its thralldom. This must pass for what it is worth, with all who are able to compare Washington and Marshall, Hamilton, Jay, and Madison, with the teachers of the new mental and political philosophy.

We, on our side, may have limitations. They are shut up to Nature, and must make the most of her. But the truth is, that in the actual applications of their absolute theory, they are ever compelled to forsake their goddess, Nature, unless they use the term as an unmeaning synonym for right and duty; and then natural rights, as we have before shown, come just to mean—*right rights*, and nothing more. In these and all similar cases, we are ever brought to this one conclusion: A portion of the population must, from the very necessity of the case, be judges of the rights of others, and these latter must submit to their decision, or no government can ever be established; or, if commenced, can ever have any security for its continuance during any period of time.

We find it occasionally extremely diffi-



cult to understand our author, and we sometimes doubt whether he always really understands himself. It is impossible to mistake him when he says of each man, "His voice must be heard in the State, because he is one of the many persons who compose it." This is plain enough, however false; and so also is the theory on which, perhaps unconsciously, the author founds it. It is all as plain as numeration in arithmetic. The State, then, is nothing more than the *aggregate sum* of its numerical parts. The rights existing are only the sum of individual rights accumulated in the *concern*, and receiving no modification from the organism of society. Each individual's equal right to govern rests simply on the fact that he is a part, and on no other foundation whatever.

Very soon, however, he is found illustrating the odd remark of Horace:

"Naturam expelles furca, tamen usque recurret."

The real nature, as we have said, will assert her rights. Their own common sense will, at times, be heard, in spite of their philosophy.

"Et mala perrumpet furtim fastidia victrix."

They *must* talk of *some* limitations. They may style it an abstraction; still, they cannot, for the life of them, always avoid the language of truth, or help talking occasionally of society as an *organic whole*, which, in the order of nature, if not of time, is so before the individual, that it not only modifies, but actually creates his rights, relations, and duties, and makes him, in fact, a different being from what he would be out of society—just as in every other true organization, a part, severed from the whole, as a hand, for example, cut off from the body, is no longer the same thing that it was before, nor strictly entitled to the same name, although the courtesy of language may allow it to be retained. It is thus that society constitutes man what he really is, rather than that man constitutes society. Out of it, as Aristotle truly says, he is no longer strictly man; but either a beast or a god.† Whatever he may be in respect to his Maker, he has no rights as towards his fellow-men, because, in such a state, he has, to them, no relations. To talk, then, of an inalienable, indefeasible, not-

to-be-surrendered, absolute right of suffrage, is, in itself, absolute nonsense; just as absurd as when the equally insane ranters, on the other extreme, talk of the natural, inalienable and indefeasible rights of the Crown.

The conclusion from the whole view is, that our author's magnificent scheme of rights, and his high-sounding propositions, run down again, as they always will when strictly analyzed, into flat truisms, directly contradictory of the premises from which he sets out. After all the turbid and sputtering fermentation has worked itself off, blow away the foam, and this is the stale residuum: Men have a natural, absolute, inalienable, indefeasible, never-to-be-surrendered right to govern themselves, as far as it is *right* that they should govern themselves, and with such limitations as a wise expediency, grounded upon some proper standard of good, shall determine best to promote the object for which society is organized, whatever that object may be. Pretty safe, this. "The grand fundamental maxim of the succession to the throne," (says Punch in the Comic Blackstone,) "must be taken to be this: that the crown is hereditary in all cases, except those in which it isn't." And so with respect to Counsellor Hurlbut's absolute right of suffrage, we may pretty safely say, that all men have an absolute *right* to make their own laws, and vote for their own rulers, except in those cases in which it is not right that they should do any such thing.

Besides the clamor about natural rights, there has been a vast deal of stale declamation by men of the Dorr and Dallas calibre, about privileged classes, excluded classes, aristocratic features, &c. All this miserable cant, which has about as much meaning in this country as "feudal tenures," has sprung from a most stupid misapprehension of a term. When men are denoted by natural marks, altogether out of the control of the individual, as when property is made to descend to the first-born son, then there is a privileged class. When a red-haired man, or a colored man, as is the case in some of our oldest and most democratic democracies, is denied even "the right to be a man," then there is an excluded caste. On the other hand, men may be denoted by political description, applicable alike to

\* Epist. Lib. I. 10. 24. You may drive out nature with a pitchfork, but she will be sure to return.

† Aristot. Politica, Lib. I. 1.

all, excluding none, and this is *qualification or condition*; such as every wise State will always, to some extent, annex to her most valuable rights. Now express them in the affirmative language, and they are no longer exclusions but privileges—privileges granted by the State, and all of them advances on that state of nature, or extra-society condition, in which none of them can exist, because the relations out of which they arise have then no being. For example, just as the State may lawfully say, *All* may exercise the legal profession, who have pursued three years' study of the law; so also may it say affirmatively, and, without any negative terms of exclusion, *All* may vote who have by industry acquired a small freehold, or (which we regard as a much better ground of suffrage) all males who have become householders or heads of families—all may hold certain offices when they are of a certain age, and have acquired a certain knowledge of the constitutional polity of the country. There is as much exclusion in any one of these cases as in the other. All are *conditions*, neither derived from, nor infringing upon, any natural rights, but springing directly from the organism of the State. Some of these may be wise and some not, but all involve the same principle. Suffrage is not a natural right, and to annex some conditions is the part of a wise State, which should not permit its most precious privileges to become worthless, and even mischievous by being too cheap. Some admit there may be inequality of condition and relation, while they contend there should be equality of rights. But this is absurd. Variety or inequality of condition necessarily draws after it variety or inequality of right and duty. And this is not only consistent with, but actually conservative of, freedom, as long as the condition itself is not necessitated.

Let us pursue this train of thought a little farther in respect to foreigners. On the hypothesis which regards the State as the organized source of political life, even native-born citizens derive their civil rights from that fundamental polity, without which they could not be citizens, for the simplest of all reasons—because, otherwise, there would be neither State nor citizenship in existence. How much more then must foreign immigrants be supposed wholly subject, in respect to this privilege, to the authority whose protection they have sought. The other

theory, however, derives all rights from nature. They belong to the individual man as man. They cannot even be surrendered. The office of government is simply to give them efficacy. They come from no localities. They are defined by no space. They, of course, cannot be affected by so insignificant a circumstance as the time or spot of one's birth. All limitations being restraints on natural rights, the moment men set foot upon the territory of a State, and become *parts of its masses*, they are *ipso facto*, and equally with the oldest inhabitants, entitled to all the rights the law can confer. On such a theory, there is no need that foreign swarms should go forth, like the valiant Northmen of old, and boldly asserting the *natural right* of the strongest, wrest by the arm of conquest the possessions of a weaker foe. There is an easier process, which certain late researches into the *jus gentium* has brought to light. Only let them come in sufficient numbers to claim alone, or by the aid of a party that wants their votes, a numerical majority, and the work is done. Such are the circumstances of some of our smaller States, and such the present condition of the swarming population of Europe, that it would be nothing strange for this to be done, in certain cases, without internal aid. They might arrange themselves at once into a mass meeting on the shores of Delaware or Rhode Island, call a convention on the spot, and form a new paper constitution, which should immediately vest in themselves equal rights with the former population. For, are they not men? Have they not "desires which nature has implanted," and does not the new philosophy declare that "*hence are the rights of man?*" May they not, in perfect consistency with the doctrines of this book, say to the former occupants—"Here we are, all on the soil together. Are we not all men; all children of nature, all possessed of equal natural rights? What difference can it make who came first, or who came last? Those who came first have no more right to say when our citizenship shall commence, than we have to say when theirs shall terminate." Is it not the very essence of this doctrine that every moment of the individual and national existence stands severed by itself? The past cannot control the present or the future. The moment this is admitted, we are at once upon a totally different philosophy.

More than all—are they not people?

Are they not the masses? Hear, then, our author on this subject (page 52):

"Whenever a majority of the people rise up and *demand* a reformed constitution, is it not their *right* to have it?—and they *will* have it, since the consent which gave vitality is withdrawn, and of course it falls for want of support. Another takes its place. But it is said that this is a *revolution*. Let us not be frightened at a word. It is a change, a peaceful, moral change. It is a step of progress—it may be of great progress—in the cause of *human rights*."

Had the old Normans but known anything of this doctrine of human rights, or been inclined to take this "step in progress," they might simply have gone over and outvoted the Anglo-Saxons, instead of having all the trouble and all the odium of conquering them. We are drawing no caricatures. Any man who is acquainted with the kind of colonization by which we have acquired Texas, and by which also it is gravely proposed to obtain California, and even all Mexico, will have the best idea of this species of peaceful revolution, this method of taking advantage of the laws of other countries for the purpose of admission into the territory, and then claiming the inalienable rights of man, in nullifying all its existing institutions.

It is sufficient to say, in concluding this subdivision of our subject, that here also are certain questions of a wise expediency. It may, with great reason, be contended, that citizenship may be rendered worthless, and worse than worthless by being made too cheap; that it is highly desirable that we should be a *gens*, instead of a mere collection of men and women from all parts of the world, and that no national existence ever has been stable, or can be expected to be stable, that is not founded, in a great degree, on homogeneity of race. In this point of view, too, it may be said to be vastly important for us to maintain a fixed and decided national character, ever liable to be destroyed by the perpetual influx of foreigners. Here, then, natural *rights* are found to have no meaning; and, instead of them, we are forced up to a higher rule of *right*, even that wisest expediency, which has regard to the nation's truest well-being, in the security and permanency of its organic life.

Let the reader keep in mind, that we have taken the utilitarian hypothesis, simply to batter down, by means of it, the system we are reviewing. We hold to a higher theory, namely, that government

is a divine institution, and that the State is a moral agent, and has reference to the highest good of man, moral as well as physical. But no very lofty position is required, to demolish the absurdities of the view against which we contend. Its prime fallacy consists in the juggling substitution of the noun for the adjective. Man has a right to this, and to that, irrespective of its being right, or for the good of society as a whole, and, through such whole, for the good of the parts in their various relations. Now, unless their own assertions are to pass for proof, they cannot, on this ground, demonstrate their simplest proportions. They cannot even maintain the doctrine of the equality of human ranks. Whether there shall be orders among men—a nobility and a peasantry, a priesthood and a laity—may also be treated as questions of a sound expediency. It matters not, now, for our present argument, whether the decision be for or against such equality. The bare possibility that, in certain circumstances, the affirmative may be grounded on the higher good, is sufficient to sweep away all claim of natural and inherent right to the contrary. If it can be shown, that in any state of society, the existence of such relations gives rise to many mutual virtues and salutary traits of character, which could not otherwise be called out, and that they are, in other respects, for the best good of such society, then, in respect to it, there is an end of the question. Our author admits that, in regard to wealth, there must and will be distinctions among men. There must and will be an aristocracy here. Laws to prevent it, (and here he gets again on the utilitarian hypothesis, and away from his scheme of natural rights,) he thinks will do more mischief than good.

Now suppose that it can be fairly shown, in given circumstances, that since there *must* be the high and the low, the independent and the dependent, it is much better for the State, as an organic body, acting for its highest good, that this aristocracy should be founded on an illustrious ancestry, or on birth, as furnishing some stable and well-known test in which Providence and Nature are both concerned, rather than on the mere accident of a successful commercial or manufacturing speculation: Suppose it to be shown that such a standard, while, in the course of generations, it produces no more real inequality than would exist without it, is productive of more good and less evil, in consequence of being confined to

regular channels;—that, by reason of being established and well known, there is more kindly feeling existing between the related parties, less discontent, uneasiness, malevolence and mutual jealousy;—that, therefore, there is more real benevolence and less pride on the part of the rich and the distinguished, and a more genuine feeling of brotherhood mingled with their sense of dependence on the part of the lowly: Suppose it could be shown, that Aristotle is right in the opinion, that a State cannot be a *compact* or well-fitted structure, without such differences, any more than a building could be firm without variety in the size, nature and strength of its materials: Imagine it proved that such a condition is really more ennobling to human nature—that Christianity has a fairer field for moral discipline, in bringing out those virtues of kindness and humility on the one side, and of love and gratitude on the other, which seem only capable of existing in such antithetical contrast, and which are worth more than all fancied natural rights in a society where a proud and painful distrust is engendered, under the name of “that eternal vigilance which is said to be the price of liberty:” Suppose that thus the truest good of all classes is best promoted, in such a way as to overbalance the great evils which also necessarily enter into such a State, and that all this, as matter of fact, is fairly made out to be true of a certain people in certain peculiar circumstances, although it is far from being true of us: Who does not see that, in respect to that people, at least, there is an end of the abstract question about natural rights? Then and there *is it right*, that there should be such an *Αριστοκρατεία* established, as being not only the government of the best or noblest, but actually *the best* government. We have stated our hypothetical case strongly for an aristocracy, because our argument against the mischievous doctrine of natural rights irrespective of the good of society, required it to be thus presented. In the case supposed, those on whom the State, in pursuance of such ends, bestowed such privileges, would have a *right*—that is, it would *be right* for them—to enjoy them; and it would be very *wrong* for any persons to make a revolution, and, by physical force, break down such a state of things, on no grounds of actual oppression, but only as interfering with the inherent and inalienable rights of man.

A democrat of the Dorr stamp might

say, that our very statement of the question betrays a leaning to arbitrary power. To avoid the imputation from a sect so fanatical, irrational and mischievous as this, we would never descend even to enter a *protestando* against their conclusion. On other grounds, however, would we express the belief, that such a state of society as we have described, along with great and certain benefits, has also contained in its bosom great and sore evils, which have more than balanced the account. Besides, it has had its day, and no rational man among us ever dreams of the possibility of going back to it. We have, as our author says of another subject, “made a step in human progress;” whether for weal or woe, whether to a better condition, or to one which, although full of dire evils, is yet a necessary transition to a future more glorious than all that has ever gone before it, are questions in respect to which we may have high hopes, but cannot assert that we have reached the point of absolute certainty.

We claim to be a sincere lover of rational freedom. We certainly will yield to no democrat, of this school at least, in true devotion to those republican institutions of our own, by which this great experiment is being worked out. We have yet a true State, and, as organized by our heroic fathers, a noble polity. It is because we love them, that we must be forever opposed to all that ultra democracy, whether existing in the form of loco-focoism or whig radicalism, which is daily threatening the most serious danger to our most valuable institutions, and furnishing a ground of triumph to all the Tories and aristocrats of the most corrupt States in Europe.

This principle may be applied to the very widest differences in the form and nature of government. Without any farther protest for the sake of those for whose opinions we care nothing, except to refute them, we would say, that even here there are also questions of a high expediency. The people, even when native-born, of proper age, &c., have no absolute right to govern themselves, or in other words, a republican form is not absolutely right *per se*, unless it can be shown to promote, better than any other, that highest good for which the State is organized. We are almost ashamed to state so simple a proposition, but it is necessary to expose the sophistry of the opposing argument. If the advocate of a constitutional monarchy can show, by good proof, that the mere fact, or the question



who should govern, is of far less consequence than the kind of government; that there is more evil and less good in popular elections, conducted every year amid the mournful display of the most ferocious and diabolical passions of the human soul, than in a system by which, as they would affirm, an executive head, equally well qualified, in the average number of cases, is designated by lot, or through a law of hereditary descent, under the direct care of Providence; and if the friends of a republican elective form are unable to prove, as matters of fact, that the admitted evils of popular commotion, and the continual frenzy of the popular mind, produced by political demagogues, are not less (although of a very different kind) than the terrible woes which history has shown to result from the past tendency in all monarchies to tyrannical and arbitrary power;—if this be so, then we say, there is an end of the question. The noun again is merged in the adjective. It is no longer a question of *rights*, but of what is *right*. If this be true, then we have no *right*, any of us, to vote for our supreme executive, or in other words it is *right* that it should be left to Providence, regulating by his wisdom the laws and course of descent; and it would therefore be wrong for any one to attempt to disturb such a provision, solely on the ground of any fancied natural rights, and for no higher reasons.

We have assumed these cases simply to present our view of the only true manner in which this argument should be ever conducted—namely, as a mere question of fact, to be determined by all the lights to be derived from history, and from the revelation which God has given us, not only of himself, but of the nature of man. But, says one, admit that a constitutional monarchy has all the excellences for which its advocates contend—admit that we cannot oppose the matter-of-fact argument of him who maintains that the highest good of the state requires some limitations, at least, in the elective franchise; still, we hold that both, in different degrees, are opposed to the inalienable rights of man—infringements of “the natural right to be under no authorities we ourselves were not directly concerned in making.” We maintain, therefore, that we have a *right* to break down all such barriers, and, in the language of the illustrious Jefferson, to “prefer the tempestuous sea of liberty to the calm of despotism.” To such a man we can make but one answer, and that is so exceeding-

ly simple, perhaps, as to be beside his profound comprehension: Then, sir, you claim the *right* to do *wrong*. You claim to be as democratic as you please, on the ground, simply, of your natural right to be so; and that, too, irrespective of any dangers and evils which may result from this spirit, when it becomes ultra and ferocious—a danger which all sober minds would admit, and which he must be very far gone from all rationality who would utterly deny. To sum up all in an old allusion which contains the pith of the whole matter—you have a *natural right*, you say, to shear the wolf, and you *will* shear the wolf, irrespective of any expediency, or of any dangers which may be feared from exercising the fullest extent of your power on so dangerous an animal.

We entertain the most comforting hopes, that notwithstanding the storms already encountered, the tempest of radicalism at present blowing from all quarters, and the still fiercer gales which, in all probability, it will yet be called to contend with, our glorious ship of state, the precious legacy of our heroic age, may yet be conducted to some haven of stability and repose. This hope, however, is founded on no irrational confidence in human virtue or intelligence—in no blind trust in man's natural and unaided capacity for self-government—in no belief in any innate tendency to progress or perfectibility, aside from the enlightening influence of the Scriptures accompanied by a divine power—in no fancied superiority over the people of other republics, ancient or modern—in no belief of any such charm existing in the representative system, or in paper constitutions, as shall change the nature of man. In all these—let the sentiment be ever so unpopular—we have very small confidence. Our great trust is in the conservative power of the Lord of Hosts, that special providence, which, we may humbly believe, has some great purpose yet to be fulfilled in the successful carrying out of our republican institutions. Whatever may be the good or evil of former systems, their day, for us at least, is past. “They have waxed old and are ready to vanish away.” God, we think, has reserved something better for us—a future, it is true, full of alarming fears, but those fears, to a religious conservatism, relieved by a picture abounding in the most cheering hopes.

With such views, we may surely love the institutions under which we were born: it is a virtue to do so, even when the feeling is little better than a prejudice;

yet certainly, there is nothing of which we ought to be so heartily ashamed, as of our foolish contempt for other people and other governments! How insane it is in us, to fancy that the arguments on these questions are all on one side, and that no defence whatsoever could be made of any other system. We may certainly conceive of an intelligent people voluntarily submitting to institutions very different from our own, and yielding into other hands that sovereignty which they are conscious they possess the physical power to retain. They may truly think, that the best interests of society require this sacrifice. They may, on this very account, have an attachment to their peculiar institutions, equal to any by which we may boast to be governed. We may regard them as mistaken—at least, when their conduct is viewed in reference to our circumstances, and from our position; yet, surely, we have no right to despise them as ignorantly undervaluing the true interests of humanity.

May we not see, in such a people, mistaken as we may imagine them to be, a noble example of true *self-government*, in distinction from that *government of self* which consists in the unrestrained indulgence of those animal passions that so often constitute the ruling impulses of the popular mind? When shall we learn that the *highest liberty* consists in the power of *binding ourselves*? How much more ennobling is such a spirit, even when mistaken, than that which would dictate the puerile question of our author, (page 55,) "Why should the people distrust themselves?" And why not? we ask. Is not self-distrust high wisdom in the individual man, in proportion to his knowledge of himself and of the highest truth? Was it not the wisdom of the Chief of the Apostles? And does human nature, in this respect, undergo a change for the better, when it acts in masses? Most especially is our question applicable to such a State as would be consistent with this new philosophy—a State which is nothing more than an aggregation of individuals—singly, weak and depraved, and, as experience has fully shown, even more prone to error in excited multitudes, than when under the influence of the individual conscience. Whatever may be thought of other classes and conditions of humanity, we feel that we are safe enough in this proposition—that that people who have no distrust of themselves, instead of being qualified for self-government, in the true

sense of the word, are just fit to be the subjects of a despotism.

Our experiment of sixty years is not enough to justify that insane boasting, by which we become a laughing-stock to the civilized world. Men may be the advocates even of a monarchical government, without forfeiting all claims to reason and common sense. Burke, and Johnson, and Coleridge, and Arnold, cannot exactly be regarded as fools. Did not these men know something of the art and power of reasoning? Had they not some acquaintance with human rights and human duties? Was a light withheld from their minds, which has revealed itself to Dorr, and Dallas, and Cleveland, and Hubbard, and Hurlbut? Open any page of Burke on the French Revolution, or of Arnold's Lectures, or of Whewell on the Elements of Morality and Political Rights—aye, of Hamilton, too, or Jay, or Madison—and see if you can ever find such contemptible twaddle as this:

"Man comes into society with the capital that God has given him, and he demands *free trade*. Man-making is not the business of government. It has no power to change his nature; it ought not to be ambitious to change his name. If one man be a king, all are kings—if one man be a lord, all are lords."

Or that specimen of the *στροφος* which may be found on page 26:

"Let us hold on to our humanity. Who shall rise superior to the laws of the Creator, and dictate the surrender of a single human right? A king? And why a king? He is not the product of nature, but a *monster*, born of ignorance and weak submission. A surrender of human rights!! Who stands up before man and Heaven to receive the dreadful sacrifice? A man!! He dare not attempt the rash and wicked deed," &c. &c.

And so on. We might cite almost any quantity, all in the same Bombastes Furioso, Bobadil strain—

"Ψόφον πλέον ἀξέστατον στομφακά κρηνοποιον."

But what kind of a style is this, we ask, for the discussion of so grave a subject as the nature and origin of the State, and the duties and relations to which it gives rise?

How utterly different is all this "sound and fury, signifying nothing," from the method and language of the great writers of antiquity. Duties they discuss—relations they investigate; according to their light they speak of the divine sanctions of law; with the utmost care, and with

a gravity and dignity of style befitting so important a theme, do they reason on the adaptation of the various forms of government, whether more or less popular, to the diversified habits, pursuits, and circumstances of different people and races; but in vain do you look, in them, for any of this senseless jargon about absolute or natural rights. The truth is, that of *rights* separate from *duties* and relations, they make no mention; not through ignorance of what has been revealed to modern philosophy, but because these most logical intellects saw at once, that such *abstract* rights had no existence. The standing stereotyped phrases which form almost the entire staple in the arguments of this inflated school, cannot be found in their writings. No such expression as "the absolute and inalienable rights of man," nor any similar unmeaning cant, can be met with in all the political philosophy of the ancient world. In fact, we doubt whether, without resorting to strange and unnatural modes of speech that would have utterly astonished Tully and Aristotle, they can at all be expressed in the Greek and Latin languages. And yet it was not because they involve ideas so profound as to have escaped the notice of those master minds. The Stagyrite and the great Roman lawyer knew, as well as Godwin and Paine, that men have the physical power to demolish any political structure, whenever they might choose to exercise this glorious right, and that, in this respect, it was most true, that government is dependent on the will of the governed. The democracies of antiquity had furnished some evidence of this, although not quite in such abundance as has been been subsequently presented in the French revolution, and in some of the South American States. Instead, however, of finding in this fact the sole foundation of law and government, it the rather led them to look out for some more solid basis, connected, in some way, with the invisible and the eternal. It was this, and no inferiority to our modern philosophers in respect to a knowledge of the true rights and duties of humanity, that led Cicero to that most noble sentiment:—*Hanc, igitur, video sapientissimorum fuisse sententiam, legem neque hominum ingeniis excogitam, nec scitum aliquod esse populorum, sed ETERNUM QUIDDAM*—"This, then, I perceive to have been the opinion of the wisest of men, that law (in its spirit) is neither a device, merely, of the

human mind, nor any *mere vote or decree of the people*, but an *ETERNAL THING*." Hence, too, in another place, the kindred, yet still more sublime expression:—*Orta simul est lex cum Mente Divina*—or as it is most admirably paraphrased by Hooker, "*Law hath its seat in the bosom of God*."

How utterly different, too, is all the swollen declamation of our new political philosophy, from the style of the Bible. Nothing can be more alien to the whole spirit and tenor of that divine book, than all the modern din about the rights of man. It denounces all oppression, and all oppressors, in a manner that carries with it the evidence and authority of a voice from Heaven. Its author everywhere styles himself the God of the poor, the stranger, the down-trodden, the lowly. He is the avenger of the widow and the fatherless. He taketh the part of him who hath no helper. He rebuketh princes and governors of the earth. He bringeth down the pride of kings, and stilleth the noise of the people. The Scriptures are full of *duties* from beginning to end, but they say nothing of absolute, inalienable, never-to-be-surrendered rights. We mean not merely that such expressions are not to be found, but that the whole dialect of this school is utterly foreign to the usus loquendi of the Holy Volume. Man's only absolute *right* is to do *right*, to abstain from wrong, and, in all those necessary relations which are of God's appointment, whether they be social, political, or domestic, to be governed by that "fear of the Lord, which is the beginning of all wisdom."

We have used, and expect to use, the book we are ostensibly reviewing, as a suggestive memorandum of certain themes we propose to discuss, and as furnishing a good specimen of the school to which we are opposed. In other respects, we should never think of devoting to it so large a measure of time and space. There remain several great questions yet to be treated of, and which may be thus briefly denoted. Has the State any religion, or any true morality? Can the State bind itself? an inquiry, which, at the present time, has great pertinency in respect to the contemplated convention. Has the State any strictly penal or retributive Justice, or, in other words, can it, in punishing, have regard to the inherent demerit of crime? Can the State educate, and if so, how, and what can it teach?

## ANNEXATION.

Forty years ago, a man of great energy of character, of bold and various schemes, far-seeing, ambitious beyond measure, and wholly indifferent as to the means to be used in effecting the objects of his ambition,—at length, driven by his enormities from the councils and the confidence of his country, and forced to look elsewhere for a field of exertion, turned his thoughts to the fertile territories and rich mines of New Spain. Aaron Burr was a man whom no adverse circumstances disheartened, whom no defeat subdued:—not the accumulated weight of political and moral disgrace had power to check or encumber the action of his daring mind. If he could not be first among the foremost at home, he would seek at least aggrandizement, and perhaps a throne, in other lands, whether within or without the pale of civilization. He had been a member of the national government during the negotiations for the purchase of Louisiana. He was conversant with the whole subject. He knew the value of that vast acquisition. In the great valley of the Mississippi, and in the regions beyond, he discerned the seat of future empires, and of dynasties of one of which he dreamed it was possible he might himself become the head and founder. Primarily indeed, it may have been his plan to establish a colony, and to cultivate land on the banks of the Washita; but if so, it was with the ulterior hope that the seed soon should germinate into a kingdom. The provinces of Mexico, and the rich treasures they contained, were the objects which he held up before his own mind, and with which he hoped to attract and to reward followers.

Through the persevering hostility of enemies, and the more fatal treachery of friends, Burr failed in his designs, whether of conquest or disunion, and was accused, though not convicted, of treason. He was a bad man, and he met the just fate of a bad man. He became infamous, and was driven from his country. But his plans were not forgotten. His idea of occupying and gaining a part or the whole of Mexico, by means of colonies to be planted upon or within her borders, was not lost upon the world. During his wanderings, while maturing his plans and seeking followers and coadjutors, he had whispered his schemes of conquest in the ear of Andrew Jackson.

With the downfall of Burr, his projects and his name became odious. The disturbed relations of the country with England, rendered it politic and necessary for the government to guard with more than ordinary caution against infringements by its citizens upon the rights of other nations. The peopling and filling up the Louisiana territory, and forming it into a State, sufficiently occupied the attention of men in that direction, and furnished an outlet and employment for those active, restless spirits, who are always ready to volunteer as the van-guard of civilization. So little did the idea of acquiring more territory in the southwest occupy the attention of the government, that when Mr. Monroe, in the year 1819, was settling the terms of the Florida treaty, he conceded, as is well known, to the claims of Spain, the river Sabine as our western boundary, although it was admitted that that boundary had hitherto been indeterminate, and the United States might have asserted an unacknowledged claim to territory west of that river. And this concession of the Sabine as a boundary was not objected to at the time, nor has it since been objected to, except by those who cherished schemes of acquisition and extension of territory such as those, and growing out of those, which owe their origin to the plottings of Colonel Burr.

At length the Mexican provinces declared and achieved their independence of Spain, and established a constitution formed upon the model of our own. The government of the United States was the first to take the new-born Republic by the hand, and bid it welcome into the family of nations. However subsequent events have tended to cast suspicion upon the motives of this conduct and show of cordiality, there can be no doubt that by the administration then in power, by Congress, and by the people of the whole country, there was a sincere, hearty, and disinterested regard for the welfare of a nation, which, under the disadvantages of a retarded civilization, had followed so successfully our example, as well in the battles of freedom, as in the kindred form of its government. The founding of a new empire in Mexico, on republican principles, was accepted as a pledge and omen of the progress over the world of the cause of constitutional liberty. If it



had been represented to the Mexicans that we were cheering them on, in their struggle for independence, merely that, having detached them from Spain and her protection, we might take advantage of their weakness, in the infancy of their government, domestic dissensions, and their inexperience of the forms and usages of free republican institutions, ourselves to seize and appropriate a part of their territory, the obvious and atrocious perfidy of the scheme would have rendered it as incredible to them, as it would have been abhorrent to the feelings and principles of the American people.

The idea of colonization has been not unfamiliar to the world in all times, but it has seldom been adopted as a means of conquest. Greece early sent out many colonies, and founded cities and villages in Asia Minor, in Sicily, in Italy, and elsewhere upon the shores of the Mediterranean Sea. The Grecian colonists, like the early settlers of our own land, left their native country on account of the oppressions and tyranny they were subjected to, and they sought freedom and an ampler field for the exercise of their powers and faculties in other lands. They were looked upon by their mother country as emancipated children. They soon became great and prosperous, and, as has happened in a less degree in modern times, in the case of these American States, the example of their prosperity under their free forms of government, reacted upon the parent country, in ameliorating and liberalizing her institutions, and moulding them into those popular forms which were the foundation and support of her glory, and which have attracted so much of the admiration of freemen in all succeeding periods. It was the policy of Rome first to subdue, and then to colonize—introducing her own citizens among the conquered races, and introducing these conquered races into the rights and privileges of Roman citizenship, teaching them willingly to forget a barbaric freedom, in the advantages and enjoyments of civilization. By this system, pursued for centuries, the Roman empire was extended to the utmost boundaries of the ancient world. In modern times, Spain and Portugal, and subsequently England, have taken the lead, as well in discovery, as in conquest and colonization. Force and fraud, it must be admitted, have been the means, to a very great extent, by which these nations have increased their possessions and territories. If the example of arbitrary and

monarchical governments be considered as fitting for a republic to follow, such examples may doubtless be found sufficient to countenance our occupying and annexing, without the delay of a perfidious colonization, whatever of territory our increased power and resources may enable us to lay our hands on; and thus we may go on, adding territory to territory, until our banner shall wave over the whole American continent.

England, for instance, is pursuing a career of conquest and colonization unparalleled in the history of empires. In the northern and northwestern parts of North America, in the islands of all seas, on the African coast, in India, where she holds eighty millions of people in subjection, and at length in China, she has planted her standards, and is extending her power. France, too, emulous of England's increasing ascendancy, is seizing upon an island here, and planting a colony there, now dethroning an Indian Queen, and now smothering five hundred Arabs by fire, in the caves about Algiers—striving by every means to regain her former relative position among aggressive nations. Russia, already possessed of half of Europe, and more than half of Asia, from time to time annexes a territory or a kingdom, as in Poland or Circassia. Sweden trembles in the proximity of her giant power, and she waits only for a decent pretext for seizing upon European Turkey. Nicholas, seated in the cold, dark regions of the north, has not kept pace with the progress of things in this advancing and inventive age, or he would long ago have sent a tribe of Cossacks across the Danube, to plant themselves and become independent: then he could incorporate them, and with them the dominions of the Sultan, into his empire, quietly, without any infractions of treaties or breach of faith, according to the latest and most approved method of international strategy.

Monarchies, existing only by force, are compelled by the necessity of their constitution, to divert the attention of restless spirits among the people from affairs at home, by furnishing them with occupation abroad. An outlet is wanted for a redundant population—younger sons of the nobility and gentry must have offices, and opportunities for distinction—brilliant military and naval achievements are necessary to gild the crown, and make it please and dazzle the subject populace. But such reasons are happily wanting in our republican government, and schemes of

conquest and war except in self-defence, had, until recently, been thought to be diverse from the just policy, and inconsistent with the objects, of our institutions.

In 1828, General Jackson was elected President, and in the following year took possession of the government. His was an iron will—his was a character of great energy; and he exerted the energies of his mind and character in subjecting the whole country, its business, its legislation, as well state as national, all its affairs and interests, to the control of the great central power at Washington. He taught men, if not to expect all good, at least to fear all evil, from the action of the Federal Government. He taught the merchants and the manufacturers not to freight a ship, or build a cotton factory, without first looking to see what measures of public policy, or of individual hostility, Andrew Jackson might be contemplating. If the eloquent Patrick Henry, when, in the convention of Virginia, again and again, with prophetic voice, he warned his countrymen against the dangers to be feared from a consolidated central government, was alarmed and trembled because he thought he saw an opening for such a concentration of power left in the Federal Constitution; with how much deeper emotion would he have been stirred, with what sublimer eloquence would he have denounced and repelled the advances of that absorbing central power, had he lived to the days, and witnessed the acts, of the administration of the "Old Hero."

From that period the objects of our government, the simplicity of our republican institutions, the unaggressive moderate policy befitting a Republic, so ably stated and advocated by Jefferson, in many respects a champion of liberty, seem all to have undergone a change. War, conquest, extension of boundaries for the mere sake of extension, national aggrandizement—these and such as these are the objects which occupy the thoughts of statesmen, and in considerable extents of country, possess the minds of citizens. To cultivate the arts of peace, to make our country prosperous and happy, to develop its resources, to extend its manufactures and commerce, to increase the products of agriculture, are no longer held the great primal duties of the government.

It is not at all our purpose to review the career of General Jackson's administration. The judgment of the country, and of the world, upon that subject, has not yet perhaps been fully made up. We

have to do with only a single point, not of his administration, but of his policy; not of his public and avowed measures, but of his secret proceedings. Under his auspices, at least with his connivance, the colonization of Texas was begun. The fertility of that region, the weakness of Mexico, the depression in the value of slave property in the old States, all invited and urged this measure. It would have been impolitic, at a time when our relations with that country were altogether on an amicable footing, to break with Mexico, and seize by force one of her provinces. But if, quietly, a foothold could once be gained there—if, in a time of peace, pioneer settlers under pretence of friendship, and of purposes of agriculture, without the interference or apparent recognition of government, could be introduced into her borders—it would be quite easy, when those settlers should become a colony of Americans, by means of it, to wrest off and appropriate that fair portion from the body of the Mexican empire. The government of the United States was not to be compromised or known in these proceedings, and yet it was well understood by all the leading adventurers, that they were acting under the sanction, and in the end, or in any case of trouble, would receive the protection and aid of the authorities at Washington. The suggestions and schemes of that arch plotter, Aaron Burr, had not been forgotten in the lapse of a quarter of a century. It was felt, perhaps, that good might come out of evil, or at least that the odium of such a proceeding might not be revived after so long a time; and this grand idea of conquest, under the pretence and the forms of colonization, treasured during this period, was at length to receive its development.

What line of action the Whig party will think it wise to pursue in the present state of the Texas question, and in the probable consummation of the scheme of Annexation, it is not for us to attempt to indicate. The strength and the wisdom of that party are most ably represented in both Houses of Congress; and the claims of justice, the principles of international law, the true policy and appropriate duties of a republican government, will unquestionably be, as they have heretofore been, asserted and vindicated there. The measure of Annexation, though the event seems inevitable, is not yet complete. Other acts remain to be done. It is still an open question.

That the consummation of the scheme

in the manner in which it is about to be carried through, by a joint resolution of the Houses of Congress, will be an open, flagrant and irreparable breach upon the Constitution, is a fact which cannot be winked out of sight, and which all the machinery of party is incompetent to suppress.

That the clause of the Constitution relied on, relating to the admission of new states, so far from giving power to Congress to incorporate any foreign territory, whether Texas, or Cuba, or Canada, or the Emerald Isle, or Botany Bay, has and was intended to have an entirely different meaning and object, and that it refers only to such new states as should be formed within the limits of the United States, appears clearly, as well from the terms of the instrument itself, as from the situation of the country, and the difficulties required to be remedied, at the time of framing it. The boundaries of the country as settled by the treaty of 1783, embraced, besides the original thirteen States, limited and defined among themselves, large tracts of territory, lying west and northwest of the organized States. Other parts of the Constitution, in fact all except the single section under consideration, had reference to the thirteen organized States or sovereignties, and to the people living within them, and to the formation of a united government for those States and people. This one solitary section, the third of the fourth Article in the Constitution,\* was framed with reference to that unorganized and mainly unoccupied territory, outside of the limits and jurisdiction of the States. By virtue of it, Congress provides for the regulation and disposition of such territory, for the occupancy of it by settlers, for its government as a territory, and, in proper time, for its formation into states, and their admission into the Union. The framers of that instrument would doubtless have been not a little surprised, had

they been informed that this section and these powers would be construed to give Congress the authority, in its legislative capacity, to annex foreign governments to the Union, or the Union to a foreign State. Treaties, and all matters concerning the intercourse and relations of the Union with foreign powers, were designed to be intrusted only to the treaty-making power, the President and Senate—because the Senate was to represent the sovereignty of the States. This section relating to the admission of new States, was framed altogether *diverso intuitu*, for another object, having regard as we have said, to the territories within the then limits of the country, and having no reference whatever to foreign nations or territories; and no one accustomed to construe written documents, looking at the language used, and the obvious purposes to be accomplished, would ever think of giving it a different interpretation.

Among the original resolutions in the Convention of 1787, which declared the objects necessary to be embraced in the new Constitution, was one to the effect "that provision ought to be made for the admission of new States lawfully arising within the limits of the United States." The reason was, that there had been a difficulty on this subject under the old Confederation. Vermont was asking to be recognized as an independent State, and to be admitted into the Union: the country west of Virginia and North Carolina, now constituting Kentucky and Tennessee, it was supposed would, ere long, make the same request: Georgia, then extending to the river Mississippi, would probably be divided into two or more States, and Maine would be separated from Massachusetts. But there was no provision in the Articles of Confederation, and no authority in Congress, to admit these States. To remedy this defect, and to give power to Congress, to admit Vermont and other States, as they

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\* For convenience, the whole section is copied—to wit: "New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislature of the states concerned, as well as of the Congress.

"The Congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state."

If it is borne in mind, that there was an apprehension on the part of some that Congress might undertake to reorganize the states, or some of them, so as to render them more equal in point of size and territory, against the will, and in contempt of the sovereignty, of the states interested, the purposes of the whole section will be obvious.

should arise, into the Union, was the object here proposed. This resolution formed the basis of the section now in debate. It is worth while to trace and follow the form of this resolution in its progress through the Convention until it became a part of the fundamental law. At a later day in the session of that body it was reported, by the "Grand Committee," as it was called, to which the matter was referred, in these words: "In case any of the States shall hereafter be divided, or any two or more States be united, or any new States be created, within the limits of the United States, the Legislature of the United States shall possess authority," &c. In the report of the "Committee of Detail," it stood thus: "As some of the States may hereafter be divided, as others may be enlarged by addition of territory, as two or more may be united, as new States will be erected within the limits of the United States," &c. Again: "New States lawfully constituted or established within the United States." In the original resolution, therefore, which was the germ of this clause, and in all the forms it took in its passage through the Convention, until the Constitution in its outline and in its details was agreed upon, so far from the purpose of incorporating foreign nations, or acquiring foreign territory, having been in the minds of the members, framers of that section, it is manifest that they were considering and providing for an entirely different object; and those explanatory words, "within the limits of the United States," retained constantly until the whole form and features of the Constitution had been settled upon, seem to have been dropped in the final engrossing of the instrument, without remark, and without the apprehension that their omission would change at all the sense or construction of that section—much less that it would change its whole object and purport, and transform a simple power in Congress to admit as States the communities springing up within the territories of the Union, into the transcendent authority to change the relations of the Union to the rest of the world, and in fact, to spread itself over the world. No such power was intended—no such power was given. The whole section refers to territories already belonging to the country; and the insertion or admission of those words of explanation is obviously immaterial to the construction. If we look through the numbers of the *Federalist*, the debates in the several Conventions of

the States on the adoption of the Constitution, the commentaries and adjudications that have been made subsequently, we find not a recorded word in any one of them, in the slightest degree countenancing the construction now attempted to be given by the Texan conspirators. The members of these Conventions, as well friends as opponents of the Constitution, and all writers at the time, and since its adoption, evidently understood the section to mean what the framers of that instrument intended it should mean—the giving power to Congress to govern and regulate the territories belonging to the Union, and at length erect them into co-equal sovereign States.

The actors in this scheme of violence to our own Constitution, and of perfidy to Mexico, have deprived themselves, by the mode they have taken to consummate it—by resolution of Congress in contempt of the treaty-making power—of the benefit of the precedents furnished by the acquisitions of Louisiana and Florida. These purchases, which the ablest statesmen doubted whether there was any authority for in the Constitution, but which were made under what seemed an overruling necessity, above the law, and were submitted to on that ground—not without a desire, and indeed an expectation, on the part of the friends of the measure in the first instance, that there should be an amendment of the Constitution, formally ratifying and justifying the proceedings—were made, and all acts in regard to them conducted, under the treaty-making power—a power that must of necessity exist somewhere in every government, and which in ours is fully conferred on the President and Senate. Nobody then suspected there was a shadow of authority anywhere else in the Constitution for such acquisitions; and the great doubt was whether it existed even there, in the treaty-making power. But the illuminations of *Jocofocism* had not then beamed upon the world. New lights have since been discovered or invented. Jefferson, and Madison, and Adams, and Monroe, clever men, it is true, and held in estimation by the world at their time, as statesmen, were, it seems, all in the dark as to the construction and true meaning of the Constitution. They, while hesitating as to the authority, under a government of limited and carefully defined powers, to acquire foreign territory by treaty and purchase, little dreamed that their illumined and dexterous successors in the administration of that government would



discover on the next page of the Constitution a provision broad enough to have resolved all their doubts, and saved them from all their misgivings. Great honor to the lights of modern democracy!

The annexation of Texas to this Union, *per fas aut per nefas*, seems now to be inevitable. The consummation of a scheme of treachery without a parallel in the history of the intercourse of civilized nations, unless we except that most atrocious of national crimes, the dismemberment of Poland—and the last suicidal act in the drama which shall manifest to our own citizens and to the world that the Federal Constitution, whenever its provisions or its restrictions stand in the way of executive or party purposes, is worthless parchment merely, and of no controlling force—are evidently at hand. The act of Congress by which the measure is to be effected is undoubtedly a nullity as unauthorized by the Constitution; and it would be the duty of the Supreme Court, should the question be presented to it in any of the various ways in which it is capable of being so presented, to declare it a nullity. What might be the effect on the country of such a decision of that high tribunal, were it to be made, it is, perhaps, not easy to foretell. Probably it would be disregarded, as the adjudica-

tions of that court have before now been disregarded when they have come in conflict with the interests or the determinations of sovereign states.

But our country is our country still—and Whigs are Whigs still; and, while Whigs, patriots, reverencing their country, and always ready to aid in sustaining and defending that country, and the Union, and the broken but still honored Constitution. If, in the approaching session of Congress, in any unexpected concurrence of circumstances, there shall seem to be a reasonable prospect of averting, even now, the consummation of the outrageous measure by Whig opposition and Whig exertion, that opposition and those exertions will unquestionably be made. Otherwise, and in the present aspect of the business, it is presumed the representatives in that body of the Whigs—representatives in fact of the genuine, unbiased opinions, upon that point, of a large majority of the whole people of the country—having already in past sessions exposed and denounced with surpassing ability, the bad faith, the impolicy, and the unconstitutionality of the measure, will bestow their exertions and their counsels in rendering the final arrangements of the business as little hurtful as may be to the common welfare.

#### ELFLAND.

INTO the pleasant Land  
My portals open wide,  
Where life is all a Holiday  
From morn to even tide.  
A soft purpureal atmosphere  
Above its plains is hung,  
A summer Noon and Twilight fused  
And mingled into one.  
  
From all its bounds the turbaned Cock  
Is banished far away,  
As erst he was from Sybaris,\*  
Where drowsy people lay,  
Indulging drowsy phantasies,  
Long after break of day.  
The Cricket's wiry song by night,  
By day the Humble Bee's,  
The loudest noises are that float  
Upon the Elfin breeze.  
  
Within this land, a multitude  
Of shadowy people dwell,  
Whose words and deeds, in upper air,  
Men never cease to tell.

\* The Sybarites, who lived in a hollow, were late risers, and they ostracised Chanticleer as a nuisance. It was unlawful in the same city, for braziers and smiths, of all kinds, to work, except with muffled hammers.

The Welsh king, Arthur, and his Court,  
Have woned long ages here,  
With Launcelot, the paramour  
Of faithless Guenevere.

Here Jacques, the kindly misanthrope,  
Who lived in Ardennes' shade,  
Is seen with all the company  
That there their dwellings made:  
Removed beyond the Sabbath chime,  
Far in the gloomy wold,  
Unvexed by care, they fleet the time,  
As in the Age of Gold.

That merry knot is also here,  
Of fabling Florentines,\*  
Who feasted while the Arno flowed  
Plague-purpled through its vines.  
The love of story, wine and song,  
They had in Tuscan land,  
Still warms their breasts, though ferried o'er  
Unto the Fairy Strand.

Here, too, the great Manchegan Don  
Reposes 'neath his bays,  
Who roamed the wilds of tawny Spain,  
In quest of knightly praise.  
Stretched on the banks of Elfin streams,  
With antique knights, he lies,  
And talks through all the live-long day,  
Of many an old emprise.

Here sages dwell, whose names adorn  
The mediæval days,  
In lonely turrets, lighted by  
The midnight taper-blaze;  
And pilgrims old, strange sights that saw  
On many a foreign strand,  
Such as Venezia's wanderer,†  
Beloved of Kubla Khan.

But far the greatest miracle  
That Fairy Land can show,  
A Hostel is like that which stood  
In Eastcheap long ago.  
Before the entrance in the blast  
There swings a tusky sign,‡  
And when at night the Elfin Moon  
And Constellations' shine,  
A ruddy glow illumines the panes,  
And looking through you see,  
With merry faces, seated round,  
A famous company.

Prince Hal the royal wassailer,  
And that great fount of fun,  
Diana's portly forester,  
The merry knight Sir John;  
With all their losel servitors,  
Mirth-reeling cheek by cheek,  
Cambysean Pistol, Peto, Poins,  
And Bardolph's fiery beak.

\* The interlocutors in Boccaccio's enchanting Decameron.

† Marco Polo.

‡ Boar's Head.

## THE REJECTED TREASURE.

FROM THE SWEDISH OF NICANDER.

IN the heart of Rome, not far from the palace of San Marco, stands a large and imposing edifice, whose walls, though embrowned by age, seem to defy the power of time, and to have been designed for eternity. Its simple unadorned style of architecture increases the feeling of awe, which the very massiveness of the pile itself inspires. Like most of the Roman palaces, it stands forth very proudly and majestically by moonlight. Environed by other tall structures, it is usually thrown into the shade, or rather seems a mysterious giant-shadow, among the more cheerful and brightly illuminated churches and palaces around it. The building is called the Collegio Romano, and is still the capitol of the Order of Jesuits.

Massive as this palace is, it nevertheless, like all other buildings, requires considerable outlay to protect it from gradual decay. Its enormous extent, and its numerous apartments, occupied by the members, adepts or novices of the order, or used as repositories for the archives, exchequer, library and other collections belonging to the society, involve the necessity of constant inspection, and almost constant repair. A month rarely passes, during which either joiners, painters, plasterers or masons, are not employed on some portion of the edifice.

One day in the month of August, 1828, a mason, by the name of Antonio Dossi, residing in the neighborhood of Maria Sopra Minerva, was called upon to perform, as speedily as possible, some work for the holy Order of Jesuits. The mason, eager for employment, and burning with desire to ingratiate himself with so respectable and powerful a body, repaired immediately to the Collegio Romano, followed by two trusty journeymen. An inferior brother conducted the mason to the second story, and showed him two rooms, one somewhat larger than the other, but with no communication between them. The largest apartment had lately been the private library of a deceased brother of high rank, and had now fallen to his successor. The mason was desired not only to tear off the old plaster, but also, for the greater convenience

of the new occupant, to pierce the wall, and connect the two rooms by a door, after which they were to be plastered anew, and finished in the best manner. Antonio agreed to accomplish the work within a certain time, and for a reasonable compensation.

The young Jesuit withdrew, and the masons fell to work with sledge and hammer, in the empty rooms. Antonio himself, with one of the journeymen, attacked the partition-wall on the side of the smaller room, while the other laborer was busy pulling down the worn-out tapestry, and beating off the old plaster in the larger apartment. Fragment after fragment of the wall now rattled down, and the floor of both rooms was soon covered with heaps of rubbish, while a thick, suffocating cloud of lime-dust enveloped the zealous workmen, who no longer saw, but only heard each other. The strokes of the hammer, at first so rapid, became at length less frequent and less violent. According to the laudable custom of the Roman mechanics, they often rested, and the nearer it approached mid-day, the more their zeal in the work slackened, giving place to conversation on all the topics of the day, by way of whiling away the time.

"Master Antonio," said Pietro, who was laboring at his employer's side, "I should like very much to get out of this lime-dust a few minutes before noon, for precisely at twelve to-day, the lottery is to be drawn at Monte Citorio. I hope St. Joseph will help me to a prize, for the sake of my devotion. I have chosen No. 8, because there are eight letters in St. Joseph's name, (Giuseppe,) and No. 7, because G is the seventh letter in the alphabet, and No. 15, because 8 and 7 together make 15."

"You are a dolt!" replied Antonio. "Once in my life I also risked my money in a lottery. I won twelve crowns, but lost my courage, for I had calculated on drawing at least two hundred."

"Master Antonio!" now called out Tomaso, the other journeyman, from the larger room, "here is something written on the wall, that I can't well make out."

Antonio, who was scarcely more at

home in the art of reading written hand than his assistants, went out to Tomaso, and stepping lightly over the heaps of tapestry, approached the wall and spelled out, after some puzzling, the following lines:

"Molto mi piace  
Donna, che giace,  
Muro, che tace."\*

They laughed at the doggerel verses, which were certainly out of place in a college of Jesuits; but Antonio and his companions renewed their blows, and knocked down remorselessly even the stones that bore the rhymes.

While Antonio was endeavoring with powerful strokes to demolish the wall where the door was to be opened, he suddenly heard a peculiar noise which was repeated as often as he struck upon the same point. Although he could not divine the cause of this sound, which was a kind of gentle ringing, yet remembering the inscription, he suspected that something valuable might possibly be hid there. As he became more and more convinced of the reality of the sound, (although neither of his companions heard it,) he resolved to examine the matter by himself.

"Pietro!" he called out to one of the journeymen, "I will give you the quarter of an hour it still wants of noon. Go to Monte Citorio and hear what numbers the lottery boy draws out on the balcony, and above all contrive to get a high prize. Tomaso can go with you. We must let this cursed dust settle before a poor sinner can work with any comfort. Then get your dinner, and in an hour and a half we will be back here again. I will just beat down the wall as far as the corner, for I don't care a *bajocco* for Monte Citorio and your tickets."

The journeymen immediately took their master at his word and disappeared. With still more resolute and heavy blows Antonio now battered against the mysterious place, and heard distinctly not only ringing, but clinking, in the wall. A large stone now fell out, and in the aperture appeared a small black door. "Aha!" thought Antonio, pushing awry his gray cap now sprinkled with white lime, "aha! here is some hidden treasure!" In the greatest haste he made the sign of the cross upon his breast, and hesitated at least three seconds whether to break open

the door or not; he placed a chisel in the joint—crack! a blow with the hammer, and the door sprang off, an incredible quantity of bright gold sequins pouring down at his feet. Antonio stood speechless some moments, regarding the falling shower of gold. Had any of the reverend fathers now chanced to enter, the mason would immediately have raised his cap and related the whole occurrence, without laying claim to one of the pretty gold pieces. Yes, he almost wished that some one would come in and see them. But he was alone, and remained so. All was silent in the great palace. Without long deliberation, he consigned all the sequins to his capacious pockets, which hitherto had sheltered only silver coin, *bajocchi*, and occasionally fruit and broken rolls. He then filled up his pocket with powdered lime to keep the gold pieces quiet, and prevent them from betraying both themselves and him by an untimely jingling; and having destroyed every trace of the secret cavity in the wall, he walked down stairs, looking as if nothing had happened, and intending to go home and enjoy a frugal and comfortable meal with his young wife. Had one of the holy brotherhood now met him, and accidentally directed a scrutinizing glance towards him, the mason would probably have turned pale and surrendered the sequins to escape with a whole skin. But he met no one; only at the foot of the stairs sat two young Jesuits, (who were passing through their probationary trial of humility,) eating with four lame beggars, while some curious Roman idlers, and two or three more curious Englishmen, stood looking on. Antonio saluted the humble young Jesuits as he passed, and they returned the salutation with still greater civility, but with downcast eyes entirely absorbed in their Christian love-feast. Unobserved and lighter of heart he reached the street, took a circuitous way by the Pantheon, and swallowed down all fear and anxiety in a stiff glass of brandy, which was poured out for him by the civil host in a certain corner shop near the Piazza della Rotonda. Now all was bright without and secure within. With a proud step and a knowing look, humming as he went, he walked straight to his dwelling.

Entering the large arched room in the gateway, he found his young, black-eyed wife Bettina sitting quietly at a long ta-

\* I like a woman that talks, and a wall that can keep silence.



ble, and, at some distance from her, a man in a brown coat with curly hair and dark features. Antonio recognized in him at once an old acquaintance, one of those characters who contrive to fasten themselves upon an honest fellow, and are not easily shaken off. The man's name was *Teodoro Pistrelli*, but he was often nicknamed *Il Toro*, for the sake of brevity, and also on account of his unusual strength. He had been formerly a butcher, but having failed, he now stood in a secret but intimate relation with the Pope's favorite, the apothecary *Fumaroli*. Many believed him to be nothing less than the leader of *Fumaroli's* band of spies, and that it was he who made the greatest and most lucrative seizures from the smugglers at the fairs of Ancona, Rimini and Sinigaglia. By the aid of a very considerable share of innate impudence, he insinuated himself almost everywhere, and endeavored, by all possible means, to establish himself on an intimate footing with the master or mistress of every house, where the least advantage to himself or his plans was likely to be gained.

As soon as Antonio reached the door, the pretty *Bettina* sprang kindly towards him, gave him a kiss, and then began to set out her store of provisions. *Teodoro* had determined upon dining with Antonio, and therefore waited for no invitation, but after having saluted the mason, sat down, seized upon a tempting dish of fried *triglie*, (a kind of small fish like the smelt,) and filled his glass from a fresh bottle of *Velletri*.

Antonio, who, for many reasons, was little pleased with the presence of his unceremonious guest, was, nevertheless, silent, like a good child, and only by the rapidity with which he swallowed the hot fish, and the deep draughts from the flask which he sent after them, did it appear that anything disagreeable was passing in his mind, or that anything unusual had happened to him. He seemed to wish to speak, but could not utter a syllable; he ate his soup as hot as it came from the kettle, while *Teodoro* sat cooling each spoonful, and eyeing Antonio askance. The meal was finally crowned by a dish of roasted chestnuts; and when the two men had eaten these, also, and as yet had scarcely spoken, *Bettina* began to sing a ballad as she carried away the plates and dishes, but it produced no very decided effect. At length they began to talk about the wind and weather, the

late bull-fight in the Mausoleum of *Augustus*, and similar subjects.

At a pause in the conversation *Teodoro* emptied his glass, arose and took his hat. "Brother Antonio, a word with you! I wish to ask you a question. I am in a little trouble. Can you lend me ten crowns for a couple of weeks?"

"Hum," replied Antonio, scratching his head, "you know I am a poor devil, and seldom have more than I want for the day; and to-day, *per Bacco!* I could not lend my mother's son ten *bajocchi!* But never mind, another day—to-morrow, or the day after—I'll try. I expect to get a little money then, and if you'll come again we'll see. The Evil One himself is in my head to-day; you must excuse me, but I can't help you now." Hereupon, for the sake of being civil, he asked his guest to sit down and take another glass or two. But *Teodoro* refused coldly, twisted his hat into many strange shapes, looked black, bit his lips and went off without taking leave of either host or hostess.

As soon as the visitor was fairly out, Antonio sprang to the door and bolted it carefully within. *Bettina*, already astonished at the passionate looks and manner of her usually calm and kind husband, now grew pale with terror, and retreating to the farthest corner of the room, inquired with trembling lips, "What is the matter with you, Antonio? What are you going to do?"

"Hush! hush!" whispered Antonio, seriously.

But *Bettina's* eyes began to glisten with tears, and she inquired again, "Antonio! what is the matter? You can't be jealous of me on account of that ugly *Teodoro*—I couldn't help his coming and sitting down while you were gone. Hear me, and be reasonable, Antonio!"

"Oh, what nonsense! It is quite a different thing from jealousy that I want to talk about. We are alone now. Just look here, *Bettina!*" So saying, he began to throw the gold by large handfuls on the table.

*Bettina* was now seized with a different kind of terror, which, however, was mingled with a large proportion of astonishment and curiosity. With wondering eyes, she looked now at Antonio, and now at the shining sequins. As he continued to take out handful after handful, and the pile on the table was constantly increasing, she cried out passionately, "Oh, Santa Madonna! did you steal it, Antonio?"

"No, Bettina! But hush! I tell you—don't scream so and you shall hear. I found all these gold sequins in the Collegio Romano. They came near running down my throat when I broke into a hole in the wall. But I am sorry already that I took them. I couldn't help bringing them home to show you, Bettina; but I will go and give them up this very day."

"Oh, dear Antonio!" exclaimed Bettina, cautiously approaching the table, "such a monstrous heap of gold! And you didn't steal it, but found it in the wall! Yes, you certainly ought to carry it back—if they miss it; but perhaps no living soul knows anything about it—otherwise they would have taken good care not to leave the money in a wall which was to be torn down. So I advise you to be quiet awhile, Antonio! and you see, if nobody inquires after the sequins, you will be a rich man. Then you can purchase a vineyard here, or we can go to Naples, where my aunt lives, and buy a little house and be so happy; and I will dress fine and take a drive every Sunday in the Toledo, and you shall see, Antonio, how all the gentlemen will raise their hats and bow to you, and inquire how you are, and how your Bettina is; and you will thank your friends very politely, and invite them home to take a glass of Greek wine with you. No, dear Antonio, keep the pretty coins awhile. If they miss them they'll inquire after them soon enough, and then you can give them up. But how many sequins have you found? Let us count them."

Then followed a chapter of endearments and caresses, after which the sequins were counted, and found to amount to seven hundred and ninety-five. At Bettina's suggestion, Antonio deposited the treasure in a strong box, provided with a trusty lock, and then brooded night and day over his riches. His heart beat with the most painful anxiety every morning when he went to the Collegio Romano, and every time a Jesuit entered the room where he was at work, he feared that he might hear the terrible words, "Scoundrel! produce the sequins!" Meanwhile he labored zealously, and soon finished his task to the satisfaction of the Father Jesuits, from whom he received the stipulated compensation. No one suspected anything, no one asked him any question.

Thus two weeks passed, and Antonio, who formerly in his poverty was cheerful and merry, pined away from mere

care. The yellow treasure still lay under lock and key, almost untouched—almost, for five or six sequins had been taken out to pay a couple of pressing debts, and to buy a few little trinkets for Bettina.

Teodoro did not return to borrow the ten crowns.

The thirtieth of August was a beautiful day. The feast of Santa Rosa was celebrated in the church of Minerva, and thither went Antonio. Among crowds of worshippers, he pressed forward to the chapel of the saint, which was brilliantly lighted by wax tapers, and painted with the gayest colors, and threw himself on his knees before the richly decorated image of the Madonna. It is the same figure before which Saint Rosa was accustomed in her lifetime to perform her devotions. A Dominican stood at the altar in his surplice. It was Father Silvestro, the handsomest and most eloquent of all the brothers of the order. He was tall, and still in the bloom of his manhood, but pale, and already distinguished for sanctity. His voice was deep and solemn. When he elevated the host, he looked more than human, and his eyes shone so clear that it seemed as if nothing could be concealed from them. As Antonio now looked up to the awe-inspiring face of the Dominican, and then to the radiant image of the Virgin, a blazing taper fell down and scorched his hand. Silvestro looked sharply, and the Holy Virgin looked angrily, at Antonio, who remained upon his knees confounded, trembling and overwhelmed. After mass was over he tottered home.

The mason slept not a wink that night. The following morning, as Father Silvestro sat in the confessional, a sinner approached with downcast eyes, fell on his knees before the lattice, and after a deep sigh, whispered in the Dominican's ear, "Father, forgive! I have grievously sinned. I am the mason Antonio Dossi. In the palace of the Order of Jesuits I found a hidden treasure—seven hundred sequins or more. For fourteen days I have criminally concealed my discovery; but none, or very little, of the sum has been spent. I wish to give it all up and relieve my soul; but I do not dare to appear before the face of those stern fathers without a mediator. Father! tell them my sin, and my desire to make amends. I wished to unburthen my heart to you, for you are kind and gentle, and will not treat me or my poor Bettina harshly."

After hearing this confession, Father Silvestro sat some moments silent and thoughtful. "My son," said he at length, "thy faith hath saved thee, and thy repentance shall expiate thy transgression. Tell me all, and I will relieve thy soul from its burthen of sin."

With a light heart Antonio now related all the circumstances of his golden adventure. When he had concluded and still remained kneeling in deep silence as if awaiting his final doom, Father Silvestro gently laid his snow-white hand on the penitent's head, and said: "Peace be with him in whose heart there is no guile. Be quiet and silent. Tell no one what thou hast revealed to me. When I have considered and acted, I will visit thee in thy house. Go, in the peace of the Lord."

Antonio kissed the hand of the priest through the lattice, bowed and departed. He knelt again before the miraculous image of the Madonna, and made the sign of the cross on his breast. He now saw only gentleness and forgiveness in the aspect of the Holy Virgin, and the peace of the sanctuary calmed his heart and restored confidence and repose to his bosom. More joyful than when he carried home the treasure from the Collegio Romano, he now bore with him from the church the consciousness of freedom from the burthen of sin. At dinner, Bettina was astonished at his appetite, and still more at the unusual tenderness with which he many times clasped her in his arms and kissed her.

Soon after Antonio's departure, Father Silvestro also left the church, and walked some time back and forth along the colonnade, which surrounds a pretty little garden within the quadrangle of his convent. Now and then he would step out into the garden, stop before some rich and fragrant flowering shrub, and carefully tie up a falling bough, or trim off here and there a withered branch from an orange-tree. At last he shut himself up in his cell, and did not appear again until evening, when he was seen to issue from the convent gate, in his becoming black and white Dominican robes, with the large overshadowing hat upon his shaven head, and direct his steps towards the neighboring Collegio Romano.

It is almost as rare to see a Dominican monk within the gates of a palace of Jesuits, as to find a magpie in a crow's nest. The Jesuits and the Dominicans, the most learned and the most highly cultivated religious orders of Catholicism,

have always been, if not sworn enemies, at least avowed rivals, treating each other with cool pride: the former relying upon their wealth, their cunning and their wide-spread influence; the latter reposing upon the consciousness of their classical attainments, and their purer morals and intentions. Their deeply-rooted dislike was at this time, perhaps, greater than ever; for the reigning pontiff, Leo XII., without altogether neglecting the Dominicans, nevertheless embraced, with too much fatherly partiality, the fraternity of Jesuits, whom he regarded as his own and the Church's most faithful children and strongest pillars, and upon them, both in Italy and abroad, he lavished treasures and tokens of favor. The forms of outward and dignified politeness were indeed observed between these two distinguished orders, as well as between their members individually; but seldom did a Jesuit and Dominican stand in near and confidential relations to each other, and they rarely visited each other, except when constrained by some overruling duty. It attracted therefore no little attention when Father Silvestro entered the College of the Jesuits, and desired an audience, not of the general of the order himself, for he was seriously ill, but of the reverend Father Gregorio, who had in charge the government of the Roman province of the Order of Jesus.

"Peace be with thee, Father Silvestro, thou pride and ornament of the holy Order of Dominicans!" said the illustrious and polite Father Gregorio, recognizing the Dominican, as the latter respectfully, but with dignity, stepped forward to make his salutation. Gregorio arose, advanced three steps towards him, pressed his hand slightly with two fingers, and motioned him to a seat before resuming his own. A delicate and friendly smile rested on the lips of the proud Jesuit, as he passed a beautifully wrought gold snuff-box carelessly through his fingers. Before Silvestro could utter a word, the Jesuit resumed: "The brotherly love and concord which prevails between our holy orders and the individual members, together with the friendship which you, brother Silvestro, have long been pleased to entertain for me, are enough, in themselves, to explain the occasion which procures me the unusual pleasure you are now bestowing upon me; but it would be flattering myself too much to believe that you came hither merely to see and converse with an old friend. If, therefore,

you have any business, important either to yourself or to your brethren, intrust it to me. You will find in me a friend willing to serve you, if you speak as to a brother."

Silvestro now began, with continued seriousness and in an unembarrassed manner, to explain the cause of his visit. "Reverend father," said he, "your friendly and obliging words remind me of my duty to speak openly: your precious time admonishes me to be brief. I have not come hither to seek or to desire anything for my brothers or for myself. We have, thank God! enough, and need but little. But I have come hither as an humble servant of the Redeemer, to beg you to deal gently with a sorrowful, repentant Christian, who has sinned against you, and against the reverend order of St. Ignatius, and who has placed his cause in my hands. But before I confide to you his name or his offence, will you, reverend Father Gregorio, promise to use your power over the offender, only by imposing a mild penance? and I pledge myself to you, that, as much as a Christian may, he shall make amends for his fault." So spoke Silvestro.

"Am I then known as such a hard hammer of the law," said the Jesuit, "that you must interpose your words as cushions between me and the transgressor?"

"Not so, not so," answered the Dominican; "but severity is often the duty of the ruler. Nevertheless, when the offender is transformed to the penitent, then first may he hope to speak to the heart of his judge; but now, as he dares not speak for himself, I have desired to speak for him. Will you promise me, therefore, Father Gregorio, to deal gently with him?"

"I shall not, and will not, treat him harshly; you have my promise," said the Jesuit.

"Nor others through you?" added Silvestro, calmly.

"No, no, no," exclaimed Gregorio, as he impatiently took three successive pinches from his gold snuff-box.

Father Silvestro now repeated to the listening Jesuit Antonio's whole confession; but for good reasons, and from a desire not to irritate, he was silent concerning the inscription found upon the wall. During the narration, which was made with simple eloquence, the speaker occasionally fixed his eyes upon the countenance of Father Gregorio, for the

purpose of observing the expression of anger, astonishment or pleasure his words might call forth. But not the slightest change was visible in the features of the Jesuit. They wore the same kind, unconstrained expression, at the close as at the beginning.

"Brother Silvestro!" said Gregorio, as the former ceased speaking, "I ask you now—will you pardon the offender?"

"Who? I? Why should I not forgive him?"

"Because he has most to fear from your condemnation," said Gregorio. "He has deceived you."

"Deceived! No, Father Gregorio! The man has spoken the truth to me at the confessional in the presence of God."

"Hear me, brother Silvestro!" interrupted Gregorio, calmly, but with flashing eyes—"Hear me! but look at me first, and read in my countenance that I am calm, and then listen to me! You are imposed upon. I know not whether the strange story you have just related ought most to excite my compassion or my derision. A workman find treasures within these walls! Brother! I defy all the masons upon earth to find earthly riches here in this home of world-resigning poverty and quiet contemplation! And in the cell, too, of a poor deceased but honored brother! Is not our order, but lately resuscitated from a violent death to a dawning life, still misunderstood and persecuted by the world? Is not our house a house of prayer, where we supplicate for earthly poverty and heavenly riches? Do not our brothers wander over the world, warring with the evil spirit of the times, spurned like the infected Israelites, lowly-esteemed like the first apostles of Holy Church, because they preach against the sin and vanity of men? Have they any other hope than that of a happy death, after a blameless but persecuted and suffering life, in which they seldom hear any other words from human lips, than 'Crucify him! crucify him!' And here shall gold pour forth from our walls and arches at the stroke of a mason's hammer? Silvestro! did I not know thy exalted Christian virtues, thy honorable calling, and thy great renown, I might well say that thou comest hither to mock me, or for something still worse. But you are yourself deceived through your own great honesty. Even the most noble are sometimes rash, and light is sometimes hid



from the most clear-sighted. Your Antonio is either a rogue or a madman."

"He is neither, Father Gregorio," replied Silvestro. "A rogue would have retained the gold which he had found and no one missed; a madman talks not so clearly, and so discreetly, as Antonio spoke to me this day."

"Be it with him as God and our Lady will!" said the Jesuit. "But you may be sure that here, in our poor hut, there are no flowing veins of gold. Let the man alone, or let him be legally examined, or send him to the hospital of the Holy Spirit. From us he has taken nothing. Do with him after your own pleasure. Heartly thanks, brother Silvestro, for your trouble and good-will."

The Dominican rose evidently displeased, and was about to depart; but Gregorio, who had reflected a moment, continued: "Wait an instant, brother, if it is not disagreeable to you." At the same time he put his hand to a bell-cord and rung. A brother of the order, who was waiting at the door for the commands of his exalted superior, immediately entered.

"Call hither Angelo and Luigi!" said Gregorio. Soon after two young members of the fraternity, with pale, but beautiful and expressive features, and downcast eyes, presented themselves. As they humbly saluted him, Gregorio gave them a significant look; then beginning again to play with his gold snuff-box, he inquired, "Have you both noticed here a mason called Antonio Dossi, who was employed a short time since by our Holy Order?"

"Yes, most reverend father!" replied both.

"Have you always thought the man in full possession of his senses?" inquired Gregorio, directing another peculiar glance to the interrogated Jesuits.

"To judge from his conversation and manner, he appeared more like one bewildered, than like a rational man," replied Angelo. "When I sometimes entered the room to see how the work was going on, he would often tremble as if seized with sudden terror. Sometimes he would sing or laugh wildly without any apparent cause."

"He seized me once violently about the neck, as if he were going to strangle me," added Luigi, "and he put his mouth to my ear; but I reproved him for his rudeness, and said, 'Antonio, do not that of which you will repent!' upon which

he immediately released me, saying, 'You are right, young father; a man should not do that of which he may repent,' and then he laughed long and wildly."

Gregorio now looked expressively at the Dominican, and asked the two young brothers, "So you regard this Antonio as deprived of his senses?"

"Yes, most reverend father," answered Luigi; "if Providence has not since been gracious to him, he is this day not in his right mind."

"It is even so," exclaimed Angelo; and at a signal from Gregorio the young Jesuits retired, after a profound reverence.

"What think you, brother Silvestro?" exclaimed Gregorio when they were again alone.

"I think," replied Silvestro, "that I have fulfilled my duty, and the sooner I go my way the better. Shall I then say to Antonio, that he may retain the sequins, and that the Collegio Romano does not recognize them as its property?"

"God and St. Ignatius preserve us from the possession of them and all other ill-gotten wealth! The possessor of the treasure must himself answer before the judgment-seat of God, if not before that of man, for the manner in which he obtained it, and for the use he makes of it. These are my first and last words."

"Then forget what I have said, and forgive me for having troubled you with my visit," said Silvestro, as he took his hat, and approached the Jesuit to take leave. "Farewell, Father Gregorio! The peace of God rest with you! Forgive, forgive!"

"Farewell, Father Silvestro!" said Gregorio. "Thy visit has been to me flattering and precious. Would God thou mightest come hither on such an errand, that I may be able to show thee by word and deed how highly I prize thee! I will remember thee in my prayers, even as I trust that thou wilt not forget me in thine." Hereupon Gregorio rose from his seat, took Silvestro's hand and followed him to the door. Yes, he would even have followed him farther had not Silvestro excused himself and closed the door, repeating, "Thanks, thanks, Father Gregorio! Give yourself no trouble! Adieu, adieu!"

"*Dio ti benedica!*" was heard as the last parting salutation from the Jesuit's room. The Dominican threw his hat over his glowing head as he now walked through the corridor alone, and breathed out his pent-up wrath in a long sigh.

When he reached the gate he shook the dust from off his feet, saying, "Dissemblers! hypocrites! when I become as one of you, then will I again set foot within these walls."

Father Silvestro did not return immediately to his cloister, but went to Antonio. As soon as the latter perceived the approach of his reverend confessor, he hastened to the door, and bowing and kissing his hand, bade him welcome. The Dominican saluted Antonio kindly, seated himself, and said seriously, but gently, "Antonio, you have not deceived me? You found seven hundred and ninety-five sequins in the College of the Jesuits?"

"God and our Lady and St. Anthony, whose name I, poor sinner, bear, preserve me from lies and deception!" exclaimed the mason in astonishment.

"Show me your treasure," said Silvestro, as he himself rose and closed the door, and then looked cautiously around the room, as if he feared the presence of some improper witness. But they were alone; even Bettina was not there.

"Yes, most reverend father, you shall see all, every sequin, except the five which I have changed away, and even those I hope soon to replace. I had rather be poor and seek my bread in labor and sorrow, than keep what does not belong to me." Meanwhile he had conducted the Dominican to the chest, and proved by opening it, that the sequins really lay there. Here he swore again most solemnly, that everything had occurred just as he had related at the confessional.

"You are right, Antonio," said Silvestro. "I knew before that you were neither rogue nor madman. But the father Jesuits will not recognize the gold that you found; they reject it. Retain, therefore, what fortune has bestowed upon you, and from this hour be as free from remorse as you are free from guilt. Now you are innocent. I award to you the glittering gold as a gift of Providence. Let it be employed for good and noble ends—for your own benefit, and that of your fellow-beings. But you must still keep your secret. Dangers surround you. Good night! I will see you again, or send a message to you, before morning dawns; and what I advise, that you must do. I will pray for you, as for a son. Your welfare lies at my heart. Farewell! God's blessing be with you!" And before Antonio could express his

respectful gratitude, Father Silvestro had already disappeared.

"*Corpo di Bacco!*" exclaimed Antonio, after he had stood some moments as if petrified, but had at length begun to comprehend his own happiness—"Corpo di Bacco! Now I am rich. Bettina, Bettina, come quick! Oh, you naughty Bettina! if you only knew, you would come!"

And Bettina did come. A great part of the night was spent by the happy pair in confidential conversation about their good fortune, and in laying plans and building air-castles for the future. The cock had already crowed, already were the wagons from the country heard rolling along the Via del Corso, and hoarse voices crying, "*Acquavita! acquavita!*" when Antonio and Bettina fell asleep, and continued their castle-building even in their dreams.

The night following St. Giles' day, which was the first of September, there was a loud knocking at the door of the house where Antonio lodged. The neighbors were aroused by the violent blows, and, as no one appeared to answer the summons, a head was here and there projected from the windows of the adjacent dwellings, to see what was going on. In the street in front of the house stood three gens d'armes, one of whom, with a rough bass voice, called out, "Antonio Dossi! open! In the name of justice I command you open!" At this summons was opened, not indeed the door, but a little window towards the street, and an old man's head with a large nightcap was thrust through the aperture, and its owner inquired in tones proceeding half from the mouth and half from the nose, "Signori! may I ask for whom you are seeking?"

"We want the mason, Antonio Dossi," said the first of the gens d'armes.

"Then you come—let me see—then you come just ten hours too late, Signori. Antonio and his wife are now, if God please, already beyond the Pontine Marshes; or they are at La Storta, if they traveled north—or at Subiaco, if they took the eastern route. They have paid their rent like Christian folks and gone off. *Addio! Scusate, Signori!*" And hereupon the old man shut the window.

"Open the door, old flint-head!" now shouted the corporal. "Antonio is my prisoner. Open, or I will beat the door in!"

Before this threat was put in execution,

the door creaked on its hinges, and the guards entered. The whole house was now searched, the landlord permitting the soldiers to examine everywhere. When they became at length convinced that their labor was vain, and were about to take a grumbling departure, the old man stepped forward and said, politely smiling, "Signori! excuse me for asking a single question. By what authority have you come here to disturb the repose of me and my household? What have I or my family to do with justice?"

The corporal produced his written order to arrest and imprison the mason, Antonio Dossi, accused of burglary by Teodoro Pistrelli. With spectacles on his nose, and by the light of a bright brass lamp, Antonio's landlord perused the high commands of the Buon Governo, and said coldly and drily, as he handed it back, "Signori, I don't know how Signor Teodoro has suddenly grown so rich that one could steal from him several hundred sequins, but this I do know, that Antonio Dossi is no thief, but an honest fellow; and it has probably been proved to your satisfaction that he is no longer here. Signori! il mio rispetto!"

So saying, he lighted the discomfited ministers of justice out at the door, and even through the gate, which he carefully closed after them. The gens d'armes retired, followed by shouts of derision from a great crowd, who had meanwhile collected.

We are now briefly to relate the occasion of Antonio's sudden flight, and also of the night-scene just described. Teodoro Pistrelli, though he did not return to borrow the ten crowns of Antonio, had nevertheless waited for an opportunity to visit Bettina during the rude mason's absence, to worm out of her, if not money, at least some valuable information concerning her husband's affairs, and the strange state of mind in which he had found him at his last visit. He would not go to Antonio with any farther requests or questions, lest he should receive a stab for an answer; for that the man was horribly jealous, his self-love and the consciousness of his own vile purposes assured him. He often stood lurking near Antonio's dwelling at evening, in the hope of seeing Antonio go out and leave Bettina at home, or of seeing Bettina come home while Antonio was away. But fortune did not favor his wishes, until he one evening saw the Dominican monk Silvestro return from the College of Je-

suits, and enter the room where Antonio lodged, closing the door after him. Teodoro crept as near the door as he could, laid his ear to the key-hole, and, with his delicate auditory organs, caught the greater part of the conversation between Antonio and the monk. Before Father Silvestro could fairly open the door, Teodoro had disappeared and was hastening to his powerful patron, the apothecary Fumaroli, for the purpose of disclosing his secret, and of devising with that worthy a plan for satisfying his thirst both for revenge and for gain. Fumaroli listened eagerly to Teodoro's narration, and before it was completed, a plan was matured in the apothecary's head, whereby he hoped in two ways to benefit the holy College of Jesuits, and at the same time to advance his own interests. In the first place, he would charm the treasure rejected by the Jesuits back into their hands, (after having secured, however, a handsome per centage for himself and his assistant;) and secondly, he would humble Father Silvestro, and through him, the whole Order of Dominicans so hated by the Jesuits. Fumaroli remained not long at home, but repaired to the Collegio Romano, and appeared before Father Gregorio. Here, however, he found that all his trouble was needless, and that his cunning plans had been anticipated by the more crafty head of the Jesuits. The fruit of this confidential interview was an order issued by the city government to imprison Antonio, on the charge of having stolen the golden treasure from Teodoro Pistrelli. Unwearied in his zeal to ruin others and enrich himself, Fumaroli proceeded from the College of the Jesuits to the Vatican, where he often spent the evening in the Pope's cabinet, with a few other confidants, sometimes—indeed usually—in card-playing. It is said at Rome, that the Holy Father carries his partiality for this unworthy favorite to such an extent as to honor the players with his exalted presence, although no one ventures to assert that he ever takes a hand himself. When Fumaroli now entered the cabinet, and found the Pope in a favorable mood for his purposes, he failed not to avail himself of it. He described, in his usual coarse, but at the same time artful manner, Silvestro's visit to the Jesuit Gregorio, (which the latter had himself related to him, with perhaps some necessary embellishments,) and represented the conduct of the Dominican in such a light that the Pope was inflamed with

the most violent wrath, and swore by the keys of St. Peter, that Silvestro should pay dearly for his shameful attempt to disgrace the Order of Jesuits, who deserved so well both of Church and State. The Holy Father laid the matter so deeply to heart, and became so much excited, that he was seized the following night with a sudden and violent illness, and his life was for some days after in real danger, until at length the united cares of the physician and apothecary partially restored him.

Father Silvestro, though indeed ignorant of all these intrigues, had nevertheless foreseen that the Jesuits, though they would not openly acknowledge the discovered treasure, would still endeavor by secret means to recover it, and therefore that Antonio could no longer be secure in Rome. Having, after his last conversation with his penitent, retired to his cell, and in the silence of the night considered what was to be done, he rose early in the morning, wrote a short but kind and affectionate letter to his friend, the Dominican Lorenzo at Naples, and, by means of the high respect he enjoyed, procured from the governor of Rome a passport for the mason and his wife; for as yet he had not been anticipated by the Jesuits or Fumaroli, the sudden illness of the Pope obliging them, for the moment, to attend to more important matters. Silvestro then went to Antonio and Bettina, and counseled them to put their affairs in order quietly, but as soon as possible, and with all their movable property to hasten over the boundary of the States of the Church into the kingdom and city of Naples. At the same time he gave them the letter he had prepared, and directed them, on their arrival in the strange city, to give themselves up to the counsel and guidance of the excellent Father Lorenzo. He commended them to the protection of God, wished them a prosperous journey, and returned to his cloister. Before two o'clock on the first day of September, the husband and wife were already without the gate of San Giovanni on the road to Naples. To avoid attracting observation, they had been obliged to leave in Rome many of their less valuable movables and household utensils, but the golden treasure was not forgotten.

Seven days after the departure of Antonio and Bettina, Father Silvestro, dressed in his robes of ceremony, and attended by a servant, walked by the deserted dwell-

ing of the fugitives, and raising a devout look on high, he thanked God for the noble lot to which he had been called, in being permitted, even through self-sacrifice, to become a father to the innocent and oppressed. Antonio's happy escape and his own reward might be read in his mildly-beaming features; nevertheless, a severe conflict even now awaited him, and he knew it.

Silvestro had been summoned to appear before the Holy Father, and was now on his way to the Vatican. The clock of the Trinità de Monti pointed to eleven in the morning, (that is to say, it was sixteen o'clock according to the Italian mode of reckoning time,) as he ascended the magnificent staircase, between files of Swiss Guards, and entered one of the eleven thousand apartments of the palace of the Vatican.

He did not remain here long, for Pope Leo XII., punctual and precise in trifles, seldom obliged any one to wait. Just as a chamberlain dressed in black threw open the folding-doors of the Holy Father's cabinet, and the Dominican, summoned by an attending officer of the *Guarda de Nobile*, stepped with a quiet but firm tread upon the rich Gobelin carpet, a dark figure, with insolent features, glided by like an evil genius, and vanished through a side door. It was the apothecary Fumaroli.

His Holiness was sitting in a gilded chair, clad in a white robe, reaching to his feet; over his shoulders he wore the purple velvet cape, bordered with swan-down, and upon his head the white cowl, under which a few scattering and hoary hairs crept forth. His face, pale as his robe, but sallow, seemed almost lifeless, while the thin, livid lips trembled still, as if from suppressed anger. The right hand, white as ivory, and decorated with the sparkling Fisherman's ring, was resting on a table of polished black, gold-veined marble, where some papers laid strewed about, with which his fingers were playing.

Father Silvestro fell on his knee, with his head bowed low, and with clasped hands. Thus he remained several seconds.

"You are Silvestro, the Dominican? Come nearer!" said Leo, with a trembling tongue, and a scarcely audible voice.

"Holy Father, I am he!" replied Silvestro, rose, advanced a few steps, and knelt again, kissing the Pope's right foot, whose purple slipper, with its cross of



gold, appeared from beneath the long white robe.

"Judas!" cried the Pope, and for a moment a hot flush kindled on his cold withered cheek; but it soon faded to a deadly paleness, like that which over-spreads the Alps when the red of evening vanishes—"Judas! betrayest thou the Supreme Head of the Church, and thy Lord, with a kiss?" at the same time drawing his foot under his mantle. "You answer not. You are silent."

"Holy Father," answered Silvestro, "when thou speakest, thy servant should be silent, and if thou rebukest me in thy wrath, I cannot but be confounded and overwhelmed."

"I know you, ye black and white monks! Ye would undermine and destroy your own mother, Holy Church, which I protect and govern. Ye would devour me, although, like a pelican, I have opened my own breast to you. But mark me! I will scourge you with my pinions. I will curb you, as long as my head is above the sod. Nevertheless," he continued, in a slower and deeper tone, "would to God that I already lay cold and dead within the walls beneath St. Peter's dome!—I, the least and most wretched of all the successors of the first apostle—*ego omnium Pontificum infimus et infelicissimus*. But thou—thou"—here he again raised his voice—"thou art evil with all thy humility, and yet I had meant thee well."

After the Pope had ceased speaking, the Dominican said,

"I stand here this day, faithful as ever, and without hypocrisy, before the throne of your Holiness. Vouchsafe to tell me wherein I have forfeited thy grace, that I may be the better able to regain it, in the way of truth!"

"Thou knowest it, thou knowest it, monk!" exclaimed the Pope, with increasing wrath. "Thou knowest it well! We have not called thee hither, that thou shouldst excuse thyself, and, like a serpent, again worm thyself into our heart; but that thou mayest hear that we know thee. Thou hast contrived a lie and a trick, whereby to cast shame and reproach upon those whom thou shouldst honor and love. Thou rememberest thy conversation with Gregorio, our faithful servant? Thou rememberest well, that thou didst accuse our good Order of Jesuits of vile avarice, and didst charge them with secreting treasures. Thou art a villain!—thou art a very Dominican!"

"Judge me, my Lord, according to thy holy will. In this matter my conscience is clear. I have injured no one, I have spoken evil of no one. My words are true," said Silvestro.

"Thy conscience is a liar, monk! It lies to thee. Thou believest it and liest to us, whereas, thou oughtest to believe us only, and obey our commandment. Look!" With a trembling hand Leo now took a paper from the table. "Canst thou read these names? Read aloud!"

Silvestro received the paper, which the Pope held towards him, and read calmly and distinctly all the names that it contained, and among them was his own. The Pope then stretched out his hand, and impatiently snatched away the paper. "Thou hast seen and read these names," said he. "All these we had purposed soon to grace with the cardinal's purple—even thee, ingrate! But our eyes are now opened. We have called thee hither that thou mightest see how we cast thee out from the number of these honored candidates. Thy name shall no longer pollute theirs by contact. As I now tear off thy name from this paper, Silvestro, so art thou from this hour shut out from our apostolic favor. Write, now, Gregorio's name in thy place—Gregorio, whom thou hast slandered and maligned. Thus do we this day avenge ourself."

After the Dominican had again taken the paper and written upon it the name of the Jesuit, as he was commanded, the Pope fixed upon him his most piercing look, and when he could discover in Silvestro's countenance no token of sorrow or humiliation, he said, as he folded up the paper, "Thou wilt never be a cardinal under the reign of Leo XII. Go!"

Silvestro went; calm and dignified as he came, he passed through the marble halls and down the marble steps, and the feelings which inspired him on arriving at St. Peter's Square, where the clear, beautiful Italian heaven arched over his head, were not the offspring of regret or sorrow, but of inward satisfaction. He was glad to find himself again without the walls of the Vatican, and repeated many times to himself, on his way to his peaceful cell in the Minerva cloister, "If I am not a cardinal, I can nevertheless be a good Christian; and if I may not clothe myself in the purple robe, I am still happy in not envying those who wear it."

Silvestro entered his cell. He was the

same when he returned as when he departed—as mild, as serious, as calm—and fulfilled his duties with the same unshaken integrity and zeal as before. None of his brethren could have suspected from his countenance or manner, that he had lost a cardinal's hat. Father Silvestro was nevertheless anxious, not, indeed, on account of himself, or of the pontiff's displeasure, which he had incurred, but for the fate of the fugitives, whom he had endeavored to protect. He well knew that they had succeeded in evading the first pursuit, and had good reason to hope that they were no longer within the States of the Church; but he knew that their crafty and powerful enemies possessed means of persecuting their victims even in foreign lands. He knew the Jesuits, and the cunning web of intrigue with which, when open violence failed, they would contrive to envelope their prey. He knew also Fumaroli, as a ready and efficient tool for the execution of plans from which he might hope to obtain any advantage for himself. But if Silvestro often feared their united powers, almost as often did he hope that Providence, the dispenser of all good fortune, would favor his humble efforts to counteract their wicked machinations. Thus he wavered many days between fear and hope. Many a night did he watch in his cell, with his Bible and glimmering lamp, in silent prayers and tears; and often, when he had at length fallen asleep, he would awake at the slightest sound, and think, with a beating heart, that some one was knocking at the convent gate, bringing him a letter from Naples. How great then was his joy, when, one evening about the close of September, a vetturino, with large boots, long hair and an honest face, entered the convent gate, and addressing himself to him, desired to speak with Father Silvestro. The monk conducted him to his own apartment, and received from him the cordial salutation of Fra Lorenzo of San Domenico Maggiore at Naples, together with a letter, which the messenger had carefully concealed beneath his vest. With glistening eyes, Silvestro read the welcome and long-expected epistle, while the vetturino refreshed himself from a silver cup filled with the choicest wine of the convent cellar; but it was not till after he had delivered to the departing messenger an answer dictated by a heart full of emotion, that he, in re-perusing the letter in his peaceful

solitude, enjoyed his happiest hour. Fra Lorenzo's letter was as follows:

"San Domenico Maggiore,  
"NAPLES, Sept. 25, 1828.

"BELOVED BROTHER:

Antonio and Bettina, preserved through your affectionate care from a threatening danger, have arrived safely at Naples. Truly, I should have written you earlier, and thanked you with brotherly warmth for the letter they brought me, and for the precious confidence you placed in me, but I desired to wait until I could say with perfect assurance, they are saved, free and happy.

"Now I can say it. As soon as Antonio and Bettina came to me, I easily induced our Prior to give them an asylum in our convent. Here they remained closely shut up some days, shielded by the safeguard of our conventual hospitality, but not without danger if they ventured out, for the police had already received a hint from Rome as to the direction the fugitives had taken. Matters could not long remain in this state, nor ought they. I went to our Minister of State, Prince Luigi de Medici, who resembles his Tuscan forefathers in his love of learning and in his hatred of hierarchical tyranny, and I placed before him in the clearest light, the case of your protégés. This effort was crowned with such success, that at the minister's command the police relinquished the pursuit. Yes, Antonio and Bettina are already declared Neapolitan citizens, and are now fairly beyond the reach of the pontifical power. They have left the convent, and have purchased a pretty little house, with a vineyard belonging to it, not far from Castle St. Elmo, and in the neighborhood of an estate owned by one of Bettina's female relatives. They removed thither three days ago, and I visited them there last evening. Antonio seems honesty and piety itself: he is likewise strong and industrious. Bettina is altogether too handsome to be entirely free from the weaknesses of her sex, but she is good, intelligent and well-disposed, and she has a kind and tender heart. When I entered their dwelling yesterday, nothing was wanted but your presence, beloved and respected brother, to make their happiness and my own complete. Antonio grasped my hand, and said, 'Oh that Father Silvestro were a sinful man like me, that I might embrace him and say, Take all! it is thine. All that we have thou hast given us, and more. Do with us after thy pleasure. Let us be thy servants, and serve thee all thy days. But he is a holy man, and needs not even our prayers. Bettina! Bettina! Come hither!' The beautiful woman modestly approached, throwing back her dark locks from her white forehead; then

they both knelt at my feet—I could not prevent it—and said, ‘Father Lorenzo, pray God with us that we may be thankful to our death!’ Then I raised my hand, trembling with emotion, and said, ‘The Lord give you peace from on high.’ And so I remained with them till late in the evening, and partook of their simple, but tasteful supper, under the branches of a young palm, interlaced with vines. I was pleased with their mutual affection, and rejoiced at their dawning domestic happiness. We talked much of you. When I left the cottage, Antonio accompanied me some distance, and on the way expressed his hope of soon becoming a father, and declared his resolution, in case their first-born should prove a son, to call it Silvestro, that both father and mother, when they caressed their innocent child, should be daily and hourly reminded of the deep debt of gratitude they owe to you. When I returned to San Domenico, I thought to myself, thus was it

resolved in the councils of Providence, that even a Jesuit should contribute to the happiness of two human beings, although against his will, and after his death.

“Brother! I thank God for permitting me to be the humble instrument of carrying out your noble work, and for giving me this occasion to honor and love you more. When spring again clothes our beautiful Naples in her flowery splendor, then visit the mason’s family, and

“Thy faithful

“LORENZO.”

If the noble Dominican is not yet a cardinal, he has at least this letter, which he values more than all the cardinal’s briefs in the world: and if the purple of the church does not decorate his shoulders, he may still, when spring returns, repair to Naples, and, upon the cheeks of the pair made happy by him, behold the purple of peace, health and gratitude.

## PAN AND LAÏS.

BY CUJUS.

— in spissa aëre.—*Virg.*

### I.

Once on a time, grown tired of shepherd’s fare,  
From hilly Arcady with swift descent,  
Rough Pan, in tunic wove of subtle air,  
Invisible to sacred Corinth went:  
Through his aërial vesture, vision-proof,  
No mortal eye could see or horn or hoof.

### II.

With soundless tread he passed from street to street,  
Through which, as arteries, the sea-winds blew;  
And gorgeous shows the mighty Rustic greet,  
Where’er from right to left his glance he threw.  
Poor seem his pastoral hills and forests all,  
Matched with the Isthmus’ peerless capital.

### III.

For now its ramparts, palaces and shrines,  
Lit up by morning’s yellow glances stood;  
A pillared labyrinth, through which there winds,  
With ceaseless flow, a various multitude:  
Nobles and merchants swiftly roll along  
On radiant cars by Thracian coursers drawn.

## IV.

And hoary priests, in robes of purest white,  
Lead slowly up the pomp of sacrifice  
To stately fanes, where wreaths of incense light,  
From fuming altars, climb the purple skies;  
While slender pipes, by youthful minions blown,  
With softest melodies the rites make known.

## V.

From foam-born Aphrodite's voluptuous seat,  
On Acrocorinth's lofty summit, pour  
(Their raven tresses dropping unguents sweet)  
Her thousand handmaids to the busy shore,  
Where they entangle in their wanton wiles  
The voyagers come from continents and isles.

## VI.

As on he passed, the Arcadian god admires,  
Between tall sculptured piles that line the way,  
Cool lymph, in crystal jets, and sheaf-like spires,  
From marble gorges spouted ceaselessly,  
Whose myriad drops with charmed eyes he sees,  
Bestrode by interwoven Irides.

## VII.

Weary, at length, of wandering here and there,  
His eyes sore dazzled by the eternal gleam  
Of sun-kissed marbles, on a shady stair,  
Near which uprose a fountain's liquid sheen,  
Pan sought repose, and heard a minstrel tell,  
In plastic verse, of Juno's potent spell;

## VIII.

Which, on a mountain-couch of vernal flowers,  
Lulled by its might the Thunderer to sleep,  
Who lies regardless of the ebbing powers  
Of Ilion's champion locked in swoonings deep.  
Here while he sat, a sudden silence fell  
On all the street, that quiet as the cell

## IX.

Of Indian saint on Ganges' marge afar  
All in a moment's interval became;  
For, on a rose-ensanguined ivory-car,  
Of swan-like shape, and lovelier than the wain  
Of Dawn, came Laïs, Eros' idol fair,  
Delicious, soft, and warm as vernal air.

## X.

A golden tiar begirt her forehead white,  
Which flashed with many an orient amethyst,  
With jacinth, pearl, and opal's fire-red light:  
Each gem the guerdon of a burning kiss  
On Asian lords bestowed, who wore the crowns  
Of those voluptuous Ionian towns—



## XI.

Miletus, Smyrna, and the rest, that line  
The eastern margin of the central sea ;  
Whence many a burnished galley o'er the brine  
To Corinth crosses, drawn by witchery  
Of laughter-swimming eyes, and rosy lips,  
Wherein she doth all other towns eclipse.

## XII.

Slow rolled proud Laïs' wheels, while here and there,  
On warrior, bard and sage, who spell-bound stood,  
She showered familiar smiles that flushed the air,  
And thrilled each heart in all the multitude :—  
Her favoring glances raised a prouder glow,  
Than all the wreaths that glory could bestow.

## XIII.

Pan at her presence felt his *nimbus* turn  
Fire-red, like clouds around the sinking sun ;  
Not thus for dreamy Dian did he burn :—  
And how a kiss might from her lips be won,  
He of his horn-clad brain desired to learn ;  
And by it did ere long a way discern.

## XIV.

For, swift as light, from some far river's meads,  
A hornet flying drove his venom'd sting  
Into the foreheads of her glossy steeds :  
They bolting upwards, made a sudden spring,  
That snapped, like gossamer threads, each leathern trace,  
And dashed the chariot on a statue's base.

## XV.

Ah, hapless Laïs ! groaned the frightened crowd ;  
But quick agape with wonder they beheld  
A hairy shape above the charmer bowed,  
Whom bruiseless on his nervous arm he held :  
He gazed a moment—smacked her hueless lips—  
Gave a loud laugh—and vanished in eclipse.

## THE CONVENTION—REORGANIZATION OF THE JUDICIARY.

[The ability with which the following views, on a topic of great moment, are presented, has induced us to lay them before our readers, without, however, wishing the Review to be considered as committed to any particular plan, or opinions, therein set forth, farther than as regards the need for great and jealous care on the part of the people and their representatives, in dealing with the most important of the departments of civil government—the Judiciary. The subject invites discussion—and we hope that the strong and wise minds of the country will give it their most earnest attention. The proposed Convention in New York State, is, in itself, a matter of local interest ; but the manner in which it shall be held, and the results which are to follow it, cannot fail to be of importance to all parts of the Union.—ED. AM. REV.]

THE Convention, then, for Constitutional Reform in this State, is destined, it appears, to be held—let those dislike it who may. Whether we are of the number of the dissident or not, it is therefore not so material now to declare. What seems to remain for prudence, as well as patriotism, is to contribute our efforts towards averting the abuses and insuring the benefits which are apprehended by the opponents, or expected by the friends, of this delicate and important movement.

We may remark, however, that these anticipations, both the one and the other, are probably exaggerated, but exaggerated only in as far as misplaced. They attach themselves, we understand, mainly to the political features of the project, to the bearings of the result upon the interests or the objects of party. But, without reference to the comparative merits of these interests, or inquiry into the objects, we are content to rely, at least for the present, for prevention of any serious consequences in the political section of the Reform, upon the neutralizing effects of this competition of purposes—a principle, for the rest, which is the constant and, it would seem, a providential protection to the common weal, against the excesses of adverse parties ; which, when they degenerate into factions, organically or occasionally, are like the blades of a pair of scissors, of use only by acting in the teeth of each other.

But there is an article on the programme of the proposed Convention which can find as little security, direct or incidental, from a partisan conflict, as it needs and merits much from the patriotic solicitude of the citizen. The subject, moreover, is one which demands, in the treatment of it, a degree of general knowledge, together with a species of experience which are sufficiently rare perhaps apart, but

still rarer in combination. Besides these claims on the score of danger and difficulty, there is also its importance to the State ; which it is not immoderate to pronounce—either for good or for evil—not inferior to all the rest together. Here, indeed, the fears and the hopes of the most sanguine may be realized. To this topic, accordingly, we propose to address ourselves. It is a cause without a party, for the reason that it is the cause of all parties, the cause of the people ; and yet one which the people cannot assume to manage by themselves without incurring, almost inevitably, the proverbial penalty of becoming one's own lawyer. Nor, in this selection of an object of universal, rather than partisan concernment, are we undutiful, we are very sure, to Whig principles. With the Whig party, too, we cannot but be quite in accord, while approaching the discussion in the spirit of that true conservatism which operates not by indiscriminate resistance to change, but by the intelligent and seasonable combination of Order and Improvement.

The subject in question, the reader foresees, could be but the Judiciary.

The Judiciary ! The word is short, the idea sufficiently simple ; yet what a tissue of complexity and confusion does the thing itself exhibit to a mind thoughtfully acquainted with its organization, in this State. Here, it comprehends in fact several distinct or integral systems ; some intertwined, some involved, to a certain (or rather an uncertain) degree, one in another—"cycle in epicycle," &c. There is the Chancery system—coördinate, though supplementary—which is not only distinct in jurisdiction, but radically different in constitution and procedure, from the Common Law Judiciary ; then, what we shall term the Police or Correctional system, which is special and subordinate, but hardly inferior in importance,

and certainly *not*, in the need of reformation, especially in this city, to any of the others. Now, a detailed exposition of all this, with a discussion item by item of what ought to be expunged, and what to be assorted—a discussion, of course, involving, moreover, a survey of the principles, the philosophy, of the institution itself—this, it is evident, would extend to a volume: nay, in the hands of a modern manufacturer of law-books, it would be matter good for half a dozen. Yet such, we conceive, should be the scope, and this the method, of any writer who, aspiring above newspaper disquisition, would make himself of any substantial use to the contemplated reform. It is the people who are to be addressed, to be informed, to be influenced. But the people—though the contrary is, strangely, the common notion, even among their flatterers—the people desire and particularly need the aid of theory: that is, they desire to know the reasons of those things which they have not had the occasion of learning practically in their uses; they need principles, especially in matters at all technical or complicate, to give significance to forms and phrases which are but too apt to appear to them unmeaning or unnecessary; they need method, to give order and unity to a multitude of particulars which, for want of seizing them comprehensively, of being able to take in together their main and mutual bearings, the uninitiated are led to look upon as but a system of professional legerdemain, in which the only visible uniformities are fraud and fees.

Mindful of this and our limited space, we have to narrow still our ground, in order to be able to go the higher and the deeper. The Chancery and Correctional Courts must be excluded from our direct consideration. But the necessity of this omission we have the less to regret, that it can affect only matters of mere detail, or what might be called the statistics of the subject. The principles to be established being those of the judicial agency and organization in general, and the defects to be exposed in the main system of our Judiciary with, of course, the remedies to be suggested, concerning as they do, in like manner, the affiliated or other departments—it must be, that what we shall have said will prove as aptly, and perhaps not less obviously, applicable to the condition of the latter, than if they too had been made objects of specific consideration.

Nor does the omission, at all events, remain unsupplied. The defects and abuses of the Correctional Judiciary, at least in this city, do not subsist for want of public information, actual or easily accessible, of their pernicious prevalence. And as to the Court of Chancery, the “monster” of abuse, we are happy in being able to refer, for a thorough “overhauling” of it, to a tract on the subject, published, we think, in 1838, by Mr. Theodore Sedgwick of this city. Nothing, it appears to us, could well be more complete and satisfactory than this pamphlet. With reference to this department of the judicial objects of the Convention it ought to be re-read throughout the State, and made accessible to the people at large, by re-impression in some convenient form. It is written in the popular manner—lively and lucid—of the accomplished author. Moreover, besides diffusing information, it seems to be eminently calculated to disabuse the popular mind of a prejudice which might prove seriously unpropitious to the reform in question—we mean the well-known popular distrust of professional guidance. Only let the people see what has been thought and published upon judicial abuses, by a New York lawyer and solicitor, and one, too, whose practice is as extensive as it is well-merited, in both the departments.

We are then reduced by the foregoing process of elimination, or arrangement, to the *Common Law Judiciary of the State*; comprising the Court for the Correction of Errors, the Supreme Court with its Circuits, the County Judicatories, and lastly, the Town or Justices’ system.

The mother vice of this whole fabric we conceive to lie in the organization; or rather it is, that its proper organization has been dislocated, and distorted from the feudal purposes for which it had been admirably contrived, to subserve another and, with us, quite opposite state of things. The changes whereby this adaptation was sought, successively, to be effected, were made without nice reference to the general subject or to one another, and scarce under any other rule than the present exigency—the original type, which could have been the only proper guide, of course rather repelling us by its royal stamp, towards the opposite extreme. Of such a situation, and mode of proceeding, the necessary consequence was, an ever recurring necessity of

amending, or altering; and farther, that this everlasting amendment should operate much according to Dryden's venal opinion of the Lutheran Reformation—which deformed the more, the more it "reformed." Here, we submit, is a clue to that medley of practical sense and logical absurdity, of theoretical justice but effectual iniquity, which we have inherited from feudal England, under the name of a judicial system. And this explanation of its character is quite adequate, without superficially resorting to the cupidity of lawyers, or even the incompetency of legislators. The utility of any particular reform is not a question as to the immediate or proper effects of it merely; but embraces a survey of the whole of the system to which the subject belongs, and thence a calculation of the general result. Now this, however obvious and elementary a precept, is what would seem never to have entered the head of a "Law reformer," either here or in England; whose method, with few exceptions, would seem to have been typified, by Butler, in that of Cerdon, (the "cobbler" of law as well as leather:)

"A rectifier of wry law,  
Who would *make* three to cure one flaw."

They proceed by piecemeal, content if they but stop the running leak, and careless whether they do not spring, or prepare, half a dozen by the concussion. They may all of them abound in the best intentions, and, in England, do not lack even the soundest science of the day. But science, employed upon this patchwork mode of reform, instead of lending any security against error and mischief, has a natural tendency to promote them. The straighter we pursue a divergence, the farther do we wander from the end. Accordingly the cry still, from year to year, is "Legal Reform," and this reform proceeds precisely like the dropsy described by Horace:

"*Crescit indulgens sibi dirus hydrops.  
Nec sitim pellit, nisi causa morbi  
Fugerit venis,*" &c.

Now, in view of the preceding we earnestly ask, is the next attempt to be of the old mole-sighted, manipulating, mischief-making character? Or will we not abandon a mode of treatment which only aggravates the malady, and address ourselves to the eradication, once for all, of the disease, to the expulsion of the *causa morbi*, from the veins of the judicial patient? But how is this to be done? Why, first, by putting by the "file,"

which has so long misled us; by turning for light to the advanced juridical science of the day, instead of still poking among the British Parliamentary Journals of half a century old; by making, from this elevated point of view, a bold and broad survey of the whole ground; by constructing, however moderate the scale you may find it prudent at first to proceed upon, the plan of reform with some attention to system, so as to secure the coöperation of the parts to a unity of end, a harmony of effect—not leave them the usual jumble of fragmentary expedients, at eternal war with each other, like the atoms of Epicurus; in short, by, once for all, *laying a basis of PRINCIPLE, which, through the joint operation of its own natural development and the guidance it will meanwhile lend, the nucleus it will serve, to subsequent reformation, cannot fail—and ALONE cannot—certainly, safely, and speedily, too, to renovate the whole fabric of our judicial system.*

"A theorist!" exclaims one of those fire-side sages who call themselves "practical men." "A temporizer!" mutters, on the other hand, the radical "Reformer." No, gentlemen—neither; but one who thinks you both the worst enemies (involuntarily such, no doubt) of all that is valuable in conservatism and progress. The thing happens in this way.

In all times, probably—though they are supposed, especially by themselves, to be peculiarly a production of the modern "march of mind"—there have appeared, on the social stage, a description of absolute intellects, men of one idea, (as they have been termed,) who fasten upon some single principle, whether of action or speculation, to which they would have all nature beside to submit. Taking what is really their narrowness for a compass of mind above the crowd, they are placed incurably by conceit beyond all counsel and correction. Simplicity, with them, is a synonym for science, for wisdom. These men do not know that the simplicity, which is in fact the sign and the effect of wisdom, is the simplicity, not of individuality, but of combination. They do not dream of any such agency as a modifying or a counteracting cause, in nature. Of course they are conveniently ignorant that the phenomena of the moral world, like most of those in the mechanical, depend upon a certain science expressively termed the "Composition and Resolution of Laws or Forces;" with this difference, moreover, that the political or social problem



is almost infinitely implicated, by the eccentric agency of the human Will, by the disturbing element of voluntary Action, whether spent in events or embodied in institutions. No matter; astride upon his jaded idea our philanthropist dashes on through the inclosures erected by wisdom, equally as the fastnesses accumulated by abuse, over the common of human affairs. If he tumble, he is laughed at for a fool; if he gain the goal, he is denounced for a "destructive." There, cry the "Practicals"—who, without a pulse of the humanity (perhaps) of the Reforming Quixote, are quite as self-sufficient in their ignorant wisdom as he is in his wise ignorance—there is the consequence of following your theories. The pleasant alternative—madness or mischief! "None of your principles, then." "Down with the principles!" echo the multitude—the lettered as well as the illiterate. And down, accordingly, they go, and stay for years, perhaps centuries, after. In some such way as this we believe it is, mainly, that theory has been stigmatized, truth often strangled, the intelligent and systemic application of science to the social relations of mankind so long discredited and retarded, "by and between" (as the lawyers have it) the self-styled reformers and conservatives of every community—which commonly means, a few half-illuminated enthusiasts, (when not designing adventurers,) on the one hand, and on the other, the far more numerous party, the well-to-do and the contented-with-things-as-they-are: the great mass, the dupes of both by turns, playing the part of mutes in the comedy, constituting a dead weight, ballast—ready to roll to either side, as the wind may veer or the vessel of state may verge, whether now to support, or anon to sink, her.

But it hardly need be said that it is *ignorance*, not knowledge, of principles, of "theory," that occasions the one and the other of these excesses. The intelligent reformer, who really possesses this knowledge, is well aware that one of its first precepts is to take account of the nature and the circumstances of his subject; but he also knows that it is still more imperative not to move a step without the light of this knowledge. Without it indeed, it were wiser, in general, to endure abuses than adventure change. Without it—to apply, in fine, these reflections to the present case—the judiciary "reorganization" talked of must, inevitably, be disorganization; and alteration,

however slight, would not be wisely hazarded, in a frame now grown so frail from the joint ravages of quackery and old age.

With these views of reform in general—not unusefully declared, perhaps, to "define our position," if nothing more—we now proceed to the subject before us; which it will be convenient to distinguish into the following heads:

1st. Having noted, as a general position, the nature and effects of the judicial power in a state, we will thence deduce the rules which should govern whatever is essential in the organization of a judicial system.

2d. These rules will be discussed severally, their reasons assigned, and the common objections to them considered, whether as relating to their general merits or merely their local inexpediency.

3d. The criterion thus established, the subject to be reformed will next be analyzed. And as from a simple application of the one to the other, both the defects to be remedied, and their specific correctives must result at once, and in all the precision compatible with the nature of the subject, we shall content ourselves, in conclusion, with giving a mere memorandum of the points to be amended—preceded, perhaps, if space permit, by a glance at some of the principal plans already before the public.

To urge upon the people of the State of New York the importance of a well-constituted, well-guarded Judiciary may be regarded as a piece of very superfluous solicitude. We might be met with the reply of the honest Spartan to the rhetorician who proposed to pronounce a panegyric upon Hercules. "On Hercules! who ever thought of disparaging Hercules?" But, though duly impressed with the private and practical benefits of an efficient administration of the laws, it may yet be doubted that the body of the people are equally sensible of its political and moral consequence, in a government of the constitution and conditions of ours. It certainly cannot be too often repeated—in view, especially, of certain tendencies of the times—that the Judiciary is, in the strictest sense, the bulwark of our present political organizations. While our courts of justice are revered, while the judges are respected and respect themselves, our institutions, let demagogues do what they can, will keep their ground. But history warns us that if once this sanctuary is profaned—no matter whether by the stealthy pace of the despot who

calls himself "The Lord's Anointed," or by the impudent strut of the multitude legitimizing itself under the title of the "Majority," by a similar charter of infallibility—from this moment, popular government, guide and guard and enlighten it as you may, must cease to have any more validity, and will speedily cease to have more value, than that "social compact" imagined by some philosophers as the primitive basis of the civil authority. It was the Areopagus, though but one of its many tribunals, that kept together the miserable democracy of Athens through three-fourths of its convulsive life; and this, not by means of its legal attributions, which the demagogues had reduced to a few, but, mainly, by the moral influence of character. A well constituted Judiciary may give to governments of this fluctuating nature, something of that fixedness which we too know, or ought to know, how vain it is to expect from constitutions. It also presents that point of resistance as indispensable to the human will, as it is to the spring or the lever, to bring out the elastic energy, whether of a nation or an individual. But what need of illustration? Government can operate only by laws. Laws are worse than worthless if not duly administered. But this depends entirely upon the possession of competent judges. And good judges are to be secured only by an organization of the judicial system, adapted to guarantee their ability and integrity.

We have just intimated an analogy between the office of the fulcrum in mechanics and that which a good Judiciary is calculated to perform, politically, in popular governments. But to give it full efficiency for this, or, indeed, any other purpose of policy or justice, it should, like the fulcrum, be placed *outside* of the

body upon which it is designed to act. The Judiciary should, as it were, be exterior to the sovereign authority; that is to say, it should be *independent*. This was the meaning of a great statesman, who has described the Judiciary to be the "security which the sovereign gives to its justice against its power."

This security, the independence of the Judiciary, is important, we repeat, in proportion as other checks are wanting. It is, moreover, in accordance with at least the theory of our constitution, which seems to place the judiciary on a footing with the legislative. The Judiciary is effectually independent in the British constitution, whence ours has transcribed this deviation (if it be one) from logic in favor of policy. Would that its many other aberrations were of this salutary sort! But is the judicial in fact subordinate, even metaphysically, to the legislative power? The latter is the sovereign will declaring certain rules; the former the sovereign understanding applying and enforcing them. The authority in both the cases is coequal, the acts distinct and different; and it would be difficult, we imagine, to assign a valid reason why the institutions based upon them should not be coördinate and independent. We have, then, theory both scientific and constitutional; we have example, we have experience; we have in fine *necessity*—arising from the unwritten character of much of our law—all concurring to enjoin this fundamental principle of a judicial system—the absolute independence of the judge.

A Judiciary thus conditioned must, of course, owe its defects as its qualities, to intrinsic organization: to this we are now prepared to proceed.

Judicature is the instrument or means of putting the laws into execution\* when

\* Here, as in England, the Executive is erroneously regarded not only as a separate power, but as a coördinate member of the sovereign authority; whereas it is merely a part of the judicial office—the act of judging being the principal, as the prior function. This office may be called after either of the parts, Judicial or Executive, as the reader pleases; little matter for the name, when it does not mislead respecting the object. Of course, then, the Executive cannot have the equality assumed in the common division of powers. Nor do the metaphysical considerations whereby we just asserted the independence of the Judiciary, apply here, as may be superficially supposed. The Executive is a *mechanical* power, and therefore of its nature inferior and dependent. The Judicial and Legislative are, on the contrary, *moral* powers, and therefore independent and coördinate, of a similar necessity.

This remark will appear not unimportant, if we advert to the confusion pervading our constitutional terminology respecting the nature of the several departments of government, and the proper attributions of each. This want of all precision of idea, is painfully palpable in our political discussions. What is still more serious, it is sometimes visible in our legislation. All, down to the newsboy, can *talk* to you flippantly of the

disputed or violated. From this its object, flow the following principal inferences, which seem to be sufficiently evident without discussion.

1st. That the province of the judge is restricted to the *faithful* interpretation of the law. True, the more faithful the worse, if the laws be bad. But this is no tolerable reason for allowing a usurpation of the legislative function; and it is, moreover, a sure way, at least in a government like ours, of provoking a speedy remedy, from the legitimate source.

2d. That the aim of the judge, above all things, should be rectitude of decision. And, subordinate to this object, indeed, but scarce less important,

3d. That the end be pursued with all compatible economy and despatch.

There are two other preliminaries to be noted, which, however, are not so properly principles, as *conditions*, of a Judiciary, and which may be termed its numerical and territorial bases. The judges should be adequate in number to the quantity of business; and also, distributed at suitable distances through the state.

It will be observed of the above principles, that the first points especially to the *intellectual* qualifications of the judges and the proper limits of the judicial function; the second, principally to the *moral* qualities and character; the last, to the *manner* of exercising both these requisites with reference to the convenience of the litigant parties and the interests of justice, under the laws.

We now proceed to present a body of rules, deduced from those leading objects, and calculated to insure, as well as attain, them, through a juridical organization. No nicety of regard will be paid, in the enumeration, to the order in which they are to be applied. Method is a sort of pedantry (though a rare sort) where it is not useful. Moreover, it would be difficult, were it ever so desirable, to distinguish them completely, most of them bearing that best evidence of their aptness as a body of rules—an intercommunion of applicability to the whole of the subject. They are stated, for the reader's convenience, consecutively and categorically. Commentary and qualification will succeed, upon each, in the order of statement.

Rule I. That jurisdiction be universal as to the subject: that is, every judicatory, local and general, be competent, within its district, alike in civil and criminal causes.

II. That jurisdiction be common, or concurrent, between conterminous judicatories, at the consent of *both* the parties, to be taken in presence of the local judge.

III. That the judges be appointed by election—not popular, but representative, by an electoral body—as at present in this State.

IV. That the judges be permanent; without other limitation than the contingencies of misbehavior or disability adventitious or natural.

V. That they be amovable (much as with us at present) by impeachment in the former contingency, by executive motion in the latter and lighter case.

VI. That the judges of each tribunal be made as few as *practicable*.

VII. That no one be eligible to the office of judge in any judicatory of Record, who, besides the professional qualifications, has not attained the age of thirty-five years.

VIII. That all judges be incapable of holding any other office, or exercising any other attribution, at the same time.

IX. That appointments be made upon the principle of gradual promotion.

X. That the judges be paid by a suitable salary at the public charge, and be inhibited all fees or perquisites whatever, from the parties.

The preceding enumeration of the *organical* principles of a Judiciary will be found, we trust, sufficiently complete; though with more regard to the show of what we are obliged to term *practicalness*, and less to the substance of things, and the succinctness of exposition, it might be much extended, at least by subdivision. But even this we propose to supply by the scholium or commentary, to be offered upon each of the rules—collating and comparing the principal arguments and objections. And here an advertisement or two of a general bearing will be essential. It is to be borne in mind in the appreciation of the reasons, pro and con, in question, that their validity depends greatly, not to say fundamentally,

Legislative, Executive, Judicial, and Administrative powers; but can even our lawyers always tell “without thinking,” (as the children say) to which of these a given public proceeding is properly to be referred? Aye, they may, *without thinking*, or with the “file,” for thus they can tell it “backwards.” But demand that their reasons be drawn from the *essential character* of the subject itself; and let the subject be for instance, the “Pardoning Power.”

on the form of the particular government, the nature of the civil institutions, and the habits and character of the people; and that they should be admitted or refuted with reference to these considerations alone—not to what they have been represented to us, through that murky medium of confusion and cant, the Common Law writers of England, or as vilified by the flippancy, and varnished by the eulogy, of domestic imitation. A single instance will suffice to evince the propriety of this. In the State of New York, justice is administered in the name of the people. In England, the king (i. e. Henry 8th, or George 4th) was the pure “fountain of civil justice.” Ought the constitution of the Judiciary to be the same under both those suppositions?—for suppositions they are, and nothing more—impious suppositions. Justice is an emanation neither from king nor people: it is *above* both. Public justice should be administered *in the name of God*, of whom alone it is the sovereign attribute.—The second notice is, that they are submitted—rules and reasons—as general but sure guides, not dictated as peremptory directions. Some of them, we well know, cannot be obeyed to the letter in our actual circumstances; and this impracticability we hope to reduce to its lowest term before we come to a close. We are quite aware that we are not writing (as Cicero said sneeringly of a great contemporary) in the “Republic of Plato”—(*non in turba Remi.*)

But to our commentary.

The first rule regards *Universality of jurisdiction*. The considerations by which this is recommended, are nearly as many and various as the modes of mending and marring the constitution of a Judiciary; for, as observed above of these rules generally, it affects, directly or indirectly, almost every part of the system. To do away with all distinction of legal jurisdiction, (and equitable, we should not hesitate to add, were it “any of our business,”) were to reduce by a large proportion the number of judges, and by nearly one-half, perhaps, all that which might be termed the *fixed* apparatus of our system; and this not only without detriment, but with accelerated dispatch, probably, to the discharge of business. By this you make, of course, a large saving, not alone for the litigant parties, but also for the public treasury in the shape of judges’ salaries, court attendance, and other incidental charges. You alleviate the burthen of

jury service and expenses. You diminish the frequent inconveniences to the parties on the score of distance. You remove all occasion of doubt, as to the proper tribunal to apply to; and consequently the expense and delay of all that preliminary litigation which is wasted, so often and onerously, upon a question of mere jurisdiction. You give the court a proportionable dignity and importance—so much needed, especially to the local judicatories of the country—by uniting upon one tribunal the public attention and respect which had been divided and distracted upon several; thus strengthening that best sanction of all judicature, publicity. But it would be endless to go on. What, now, are the objections which are held to countervail so many advantages? The only we have met with, appear in the indirect form of assertions of the superior convenience, accruing from the division just condemned. Let us take them, then, on their own ground.

There is, it is familiarly known, a two-fold division of jurisdiction in our system—one, according as the complaint is of a civil or a criminal nature; the other turns upon the amount of the claim. The former is expedient, we are told, because the judge will be more capable, confined to a special branch of the law. But an advocate fully capable in both at once, and sometimes in equity also, is of common occurrence. Would the advocate lose this capacity on becoming a judge? Moreover, the task of a judge is, as a general thing, much more simple, for reasons obvious to a slight reflection. “But England has, not only these distinctions, but, further, a Court of Exchequer, Rolls Court, &c.” Aye, there is the rub! England has it!—*ergo*. Verily, we must protest, once for all, that England is, in these matters, to be excommunicated from the pale of all precedent. If we *will* be fatuously filial, why not imitate the qualities of this “mighty mother”—her calm energy of purpose—her dignity of national council and character—her decision in the administration of the laws—her spirit of orderly freedom—rather than the deformities which have been entailed upon her by untoward circumstances and a barbarous education? France, then, it may be objected—the methodical, codifying, law-and-equity-uniting France—retains a special Commercial Tribunal; to which we might reply that the absence of such a court, here and in England, both more commercial countries than



France, is a strong presumption that the necessity for it is not very urgent, or its convenience quite obvious. But once adopt it, here or there, and why should there not be a Court of Agriculture, of Manufactures, nay, of these several branches of manufactures? In short, a tribunal for the exclusive cognizance of every question for the trial of which we now require a jury of Experts? Unity of jurisdiction broken, the principle overstepped, where, we ask, is the resting-place on this equable declivity, which leads into the absurdity just indicated—or, more strictly, impracticability, which, however, is the absurd, in matters of action?

The alleged advantages of jurisdictional division into civil, criminal, commercial, &c., appear then to be few and occasional, if not indeed chimerical, while the inconveniences are numerous, constant and oppressive. Are the reasons for pecuniary demarkation any better? Quite to the contrary—they are much worse. A distinction of this sort tends to distort the nature and degrade the sanctity of justice itself, by making dollars seem the demoralizing measure of its importance. It gives a fallacious consequence to the courts of large amount. More than this, the principle itself turns upon the grossest and most mischievous misapprehension. Why is a plaintiff claiming under fifty or one hundred dollars to be relegated to a "Small Court"? Because the amount is small, says the legislator. Admirable economist! where hast thou found thy measure of pecuniary magnitude? Are you quite so ignorant in your trade as not to be aware that the importance of a given sum is not an absolute quantity, but bears a direct proportion to the circumstances, the revenue, of the claimant? that to the bulk of suitors at these small tribunals, five dollars may be of more importance than five thousand to an Astor? In truth, the relative—that is, the *real*—importance of these small claims is, in general, much rather in the inverse, than the direct, ratio of the arithmetical amount. And this ratio is, moreover, raised incalculably, where the privation of justice should, as it often must, intrench upon the means of subsistence. The poor claimant of ten dollars may, through the ignorance or partiality of a country justice, be left without bread for his children; the loss of as many millions could not reduce Mr. Astor, for example, to a similar destitu-

tion. Upon its own avowed principle, then, this criterion—if admitted at all—ought to operate rather the other way; that is, the smaller the sum, the more competent should be the Court. But, possibly, after all, it is based upon the amount, not of the client's claims, but of the lawyer's costs?

We do not, however, take it upon us to say that there should be absolutely no special tribunals. Necessity—that fate, who of yore controlled the gods themselves—will sometimes bend the most imperious principles, and in this case, seems to demand some exceptions; as for example, Courts Martial, Administrative Courts of Impeachment, &c. Nor is it insisted, with respect to the divisions discussed, that the principle we have endeavored to establish—the universality of jurisdiction—ought to be adopted into our system entirely and immediately. We do not, we beg the reader to bear in mind, pretend to exhaust this or any other *practical* question of a subject so many-sided—especially not, in the details. Our design is to spread the ground of deliberation comprehensively, while compendiously, before the public, and to describe upon it as minutely as our scale permits the lines which govern and direct the whole inquiry—leaving, generally, the considerations of a merely local or particular nature, (which could not be wisely disregarded,) to be discussed—the more intelligently, perhaps, for the lights thus furnished—by the better statistical information, or the unlimited time and space of the people, the politicians, and the ephemeral press.

The *Second Rule* was *Intercommunity of Jurisdiction*. The right of choosing one's judge among the several surrounding tribunals may, under a simple restriction, be made fruitful of the happiest results. On the score of distance, and of course expense, it would be convenient to both the parties and witnesses. It would provide a practical remedy where a judge was suspected of partiality, or of incompetency, in the general subject, or the particular cause. With respect to the judges themselves, its effect would be no less beneficial. It would engender a spirit of emulation to cultivate, not only the requisite professional knowledge, but also—what is no less essential, perhaps, to the judge—the affability of manner and probity of character whereby alone could be secured the respect of the bar and the confidence of the public. There can be

no doubt that the preëminence of the English judges is largely due to this principle. Their high character as a body dates from the cessation of the memorable conflict—or rather, the scandalous scramble—for jurisdiction between the Four Courts, which resulted in the establishment of the principle in question; though, of course, but in an imperfect and unregulated form, proceeding, as it did, from disorder, not design, like almost everything else in the peculiar institutions of that people—as well what is right as what is wrong.

Rule *Third* would have the Judiciary *Elective*: not, however, by the people immediately, but the highest representative body, acting in an administrative capacity. The problem here is, to combine the largest interest in the well-administration of justice with the fewest chances of being misled or mistaken respecting the qualifications of the candidates. Now, while our Senate cannot be supposed at all deficient in the former of these requisites, none, we think, (except it be some reckless demagogue,) will deny it to be immeasurably a safer depository of the other guarantee, than the popular voice, whether general or local; for, taken collectively, this voice will probably be mistaken about a man of whom seven-eighths of the voters can have no sufficient knowledge; and in the local department, it is almost *certain* to be misled, between personal partialities and political cabals. We could strengthen the argument were we of those who dare to question the competency of the popular intelligence even to judge of a judge. But it cannot be necessary. For who does not see the consequences, awful as inevitable, of making the judiciary dependent upon a universal popular suffrage; that is, (for example,) giving the several thousand vagabonds, in this and other cities, a voice in choosing the judge before whom they must expect to be brought in justice, before he is a week on the bench? Who does not foresee that it would be, in effect, to apprentice an order of men, who should not only be pure in fact, but above suspicion of impurity, to a course of conduct and association directly calculated to extinguish every quality, moral and intellectual, the most particularly requisite for that highest of earthly offices? that, instead of leading the judicial aspirant to rely upon an honorable life and the retirement of his library for advancement, it would be to send him

to graduate amid the pollutions of pot-house orgies and the depravities of vulgar, and often villanous, intriguing? that he, who, being lightest in intellect, education and character, mounted of course the highest, and brawled the loudest, would be the first on the popular roll for preferment, and transferred, all reeking, from the political "stump," to desecrate the sanctity of a seat of justice? We have been earnest upon this article, because we deem it vital, and understand that the deprecated innovation is to be urged upon the Convention. We hope not. For the present, however, we leave it, with one admonition to the people, which is the dictate of reason, the lesson of all history, and the warning also of the (as yet, indeed, "still, small") voice of our own experience:—*That our Judiciary be kept as clear as possible from all contact or community of interest, action or feeling with partisan politics and politicians.*

The *Fourth* Rule recommends *Perpetuity of official tenure*: that is, that the judge hold for life, or until incapacitated by misconduct or infirmity. This principle is infringed by us in various ways. Some of our judicatories are temporary; others determine at a certain age. The public detriment of the former limitation is far the greater: the absurdity, we think, is the same in both. An apprenticeship is deemed necessary to make a cobbler: expertness is, it seems, of no account in the most practically complex and important of human functions. But laying experience aside, is that which alone could possibly substitute it, professional knowledge and talent, so abundant as to support this large periodical draft? It is, at present, found impracticable, we understand, to secure them in even the presiding judge of the country counties. Yes; but give the management of these things into the hands of the politicians, and all difficulty will disappear! Multitudes of candidates for the ermine will be seen to issue, at a moment's notice, from the neighboring tavern, and to pass at once into perfect Areopagites, by a modern metamorphosis certainly equal to any in Ovid!

Now, what are the arguments, real or apparent, which have been supposed to counterweigh these considerations? for without such the course condemned would be downright fatuity. The only plausible one we remember to have seen is this, that it spares the scandal of deposition for misconduct! Now, here is an as-

sumption that our judges, as a general rule, will deserve deposition within the prescribed period—three, four, or five years. But what says experience, both here and in England, even in the case of the perpetual judges? Do we hear of misconduct calling for impeachment, once in a life-time? We remember, ourselves, but one case, in this State, for many years, and that has occurred in a judiciary of the shortest period; showing the futility of this pretended guarantee of responsibility: we allude to the illustrious Job Haskell—(a characteristic specimen, by the by, of your politically elective Judiciary.) Is it, then, for this contingency of an age, and a contingency otherwise provided for in the easy method of amotion, that we establish a regulation of constant and the most mischievous operation! There is, we believe, another pretext, but peculiar to this country, for the periodic or temporary tenure: in the political idiom it is called "Rotation of Office." Rotation of office!—as if office were instituted not for the convenience of the public—and especially the judicial office, which keeps the public together—but merely to serve as a bribe or a booty for profligate partisanship!!

The limitation on the score of age is, in principle, no less irrational. In this State, it is set at sixty years. We have just alluded to the Areopagite as a proverb of judicial excellence. Yet these judges held the office for life, subject only to removal for *immorality*. More than this: the members of the almost equally illustrious *Gerousia*, the Supreme Court as well as Council of Sparta, not only continued for life, but were *not eligible under the age of sixty*—the period at which we, in our modern wisdom, deprive ourselves systematically of the ripened fruits of experience! Here, moreover, we have not the school-boy apology of England, whom we take such care to follow in many of her absurdities.

More conclusive still upon us is the example of our own Supreme Court of the Union. But the reader may test the provision by facts. It is by it that the country has been deprived, for over twenty years, of the invaluable services, still unimpaired, of Chancellor Kent. In the national tribunal, it would have lost us several (we believe) of the most effi-

cient years of one of our most eminent jurists, Mr. Justice Story.\* In this city, among others, we might mention Mr. Duer, who would, we believe, be precluded by this legal superannuation from becoming an acquisition to the Bench of the State. In fine, any material decay of judicial intellect at the age of sixty seems an assumption unsupported by the natural history of man. Even poets, who, like the cicada they love to sing, are held to be creatures of but a summer—the summer of the intellect—have written some of their most vigorous productions after this age. Sophocles is said to have won the prize of poetry at the Olympic games, at *ninety*! And Dryden was probably sixty-six when he composed the finest ode in our language.

And even if there were some such decline in mental vigor, it would be amply compensated by the acquisition of what is no less essential in a judge—the superior maturity of judgment and weight of character of venerable years. The mental processes of judicature (as do, indeed, the most complex efforts of the intellect) come by frequent use to be, in a great degree, mechanical. The subjects, too, are uniform, with rare exceptions. So that the volatile activity of thirty or forty would, in nine out of ten cases, be exchanged with advantage to the general ends of justice, for the practical wisdom, the habitual caution and the perhaps increased conscientiousness of the sexagenarian mind. But why reason longer against what rests upon little or no reason? Yet the climax is still to come. All this scaffolding has, avowedly, been erected for the purpose of getting rid, ceremoniously (such is democratic courtesy!) of incompetent judges; while we retain another mode or two, besides, for doing the same thing! No: the true causes of these crude contrivances—if we must declare what it would not be patriotism, though it might be "democracy," to dissemble—are these: a meddling propensity of all popular communities to regulate everything, except themselves; a weak jealousy of everything in the shape of independent authority in the State, and the vulgar vanity of exercising our sovereignty. These are the true, however unconscious, motives. They are inherent in our institutions, and the seeds of their

\* It is a melancholy, if not a very "curious" coincidence, that the death of this gentleman should have had place on the same day—the same hour, we believe—that the text was penned; the writer being ignorant of even the venerable judge's indisposition.

disease. We do not, at the same time condemn these infirmities absolutely : exercised with discrimination, they may even pass into virtues. But the misfortune is that they are seldom directed against the real danger, of which the case before us is a signal example; *for no real danger ever yet proceeded from the Judiciary in a free State.* On the contrary, it has, as already observed, been uniformly the main support of popular governments, until they themselves struck it down. Here, however, our meaning is not to denounce these traits as vices calling imminently for correction, but only to signalize them as tendencies which it is well to watch. We are writing with reference to a project that is not to be the event of a day, or a year. We are properly sensible, we trust, of the responsibility of affecting, by word or omission of ours, even in the slightest degree, results of such magnitude. It is under this solemn impression that we have resigned ourselves, in the preceding observations as in some others of this paper, not to expect acquittal of aristocracy or something equally criminal, save from such of our readers as can see (as some one has expressed it) the full-grown man in the child—the oak in the acorn. To the others we shall offer, in conclusion, a more suitable justification—even the great authority of Edmund Burke. The passage—not the less profound in wisdom for being pleasant in form—speaks, it will be perceived, of the regulations in question as applied to a legislative body. But the argument is for this, but *à valde fortiori*, the more pertinent to our purpose.

“ By the new French Constitution the best and wisest members go equally with the worst into this *Limbus Patrum*. Their bottoms are supposed foul, and they must go into dock to be refitted. Every man who has served in an assembly is ineligible for two years after. Just as these magistrates begin to learn their trade, like chimney-sweepers, they are disqualified for exercising it. Superficial, new, petulant acquisition is to be the destined character of all your future governors. Your constitution *has too much jealousy to have much of sense in it.* You consider the breach of trust in the representative so principally, that you do not at all regard the question of his fitness to exercise it.”

The Fifth Rule concerns the *Amotion* of the judges—by impeachment in cases of

misconduct, moral or official, and by some more summary proceeding in case of adventitious infirmity. We have anticipated, under the preceding, all that seems requisite to be said upon this head.

The Sixth, which prescribes *Judicial Unity*, will not allow us to be equally short. In support of the principle of a single judge in each tribunal, much might be argued, and those who would see the matter sounded to its “ lower deep ” can be satisfied, we suppose, by consulting Jeremy Bentham. We, however, cannot insist upon it here, with even the ordinary hope of winning attention to our suggestions. Plainly, we think anything of the kind out of the question, in a community where *number* is the universal criterion of the public reason ; and, if it be not presumption to add, also in the actual state of even professional intelligence on the subject. Nor are we prepared to say it would be wise, were it ever so feasible, in the condition of our jurisprudence itself. We shall then content ourselves with showing how safely and advantageously the judges, upon most of our tribunals, may be considerably reduced.

Intelligence and integrity, as above remarked, are the two grand attributes to be assured in a tribunal of justice. Of both the one and the other, the responsibility, moral and legal, of the judges is the only, or only adequate, guarantee. The preference, then, between the judicial unity and plurality will belong to that side in which the guarantee shall appear to have the more efficient operation. But this is a question rather of arithmetic than of argument. For, with respect to the moral sanction, responsibility, it is well understood, is weakened in proportion to the number concerned ; and this proportion moreover progresses geometrically. A bench of even five judges may brave, and bear too, with impunity, an amount of odium before which five times five of them would have shrunk, or would have sunk, if acting singly, and thus set, as it were, in the focus of the public scrutiny. So powerfully does this one-judge system expose the magistrate to the operation of publicity, that it dispenses, in effect, with further concern about his moral, and in a measure too, his professional capacity. “ Give me,” exclaims somewhere Mirabeau, “ give me what judge you please—partial, corrupt, even my mortal enemy—I care not a fig, if only the proceedings are conducted in the face of the public.” Give him,



instead of one judge, a tribunal of even only five, and they might defy him—even him—and the public together. Nor is the legal sanction much more efficient when the number of the judges becomes considerable. How affix official guilt or incompetency, in a tribunal of thirty-seven, or of twelve, or even of five judges? how ascertain the part of each or of any one? how assign the proportion, for the purpose of penal action? The difficulty would, at least, in the bulk of delinquencies, be equivalent to entire impunity; and this being well understood, nay, felt by a sort of instinct, responsibility, restraint, would, of course, so far as legal punishment was concerned, be completely null. But is it to be supposed, we may be asked, that our judges are not actuated by conscience, by probity, apart from all responsibility to law and opinion? Yes, *ours* are, no doubt; especially the present. But it is to be borne in mind, nevertheless, that magistrates of this quality, as well as those despotic kings who may be preferable to a constitution, are but "fortunate accidents." Nor does the argument necessarily assume the absence of either conscience or honor in the commission of the delinquencies in question; but only that it is apt to be silenced or outweighed in each member of a numerous tribunal, by the assured sympathy and support of his associates. Sustained by this class-morality, bodies of men have, in all times, committed some of the darkest crimes without compunction or infamy. It is a principle having its root in one of the most universal laws of human nature. Hence, the proverbial "honor" among thieves. Hence, too, (*absit invidia*) the special codes of political morals which come to prevail in parties in proportion as they are compactly disciplined; and under whose sanction one every day sees reputable and religious men without a scruple commit, for party, enormities which would justly consign them, if done in their private relations, to irretrievable disgrace, if not also to the States Prison. In short, extend the application to a majority of the human race, and you have that "common consent of mankind" which has been held by eminent, and even by Christian,\* philosophers to be the sole criterion of moral truth—nay, the law itself of morality.

Plurality of judges, then, tends nume-

rically to neutralize the securities for judicial probity. Its influence upon the intellectual requisite is not much less prejudicial. Are we likely to find more application, more dispatch, more talent, more information, in many than in one judge? With regard to the first of these qualities, we need but remind the reader of the trite apothegm, "what is everybody's business is nobody's;" and then as to dispatch, the interminable speech (or "opinion") making which all of us are too familiar with to need description. Not more talent, surely,—talent being the exception, and alas! a rare one, among men. Not more of information, all that is pertinent to the case—law, facts, and evidence—being, presumably, furnished by the consent of the parties. But "two heads are better than one," oracularizes the vulgar saw. Calves' heads, we admit; but judges' heads are valued upon a different principle. "Divide power and you control it," says an old political axiom. To which we reply, all-sufficiently, divide responsibility and you annihilate it. This is known, moreover, to be the device of days of political despotism and star-chamber procedure, contrived for the very purpose of creating some portion of this responsibility, of opening a chink for the eye of publicity to pry through; the judges were multiplied to increase the chances of a virtuous treachery. True, the "wisest of mankind" has said, "There is *safety* in a multitude of counselors." But this seems satire: he does not say, There, is *justice*, &c. In fact, the negative advantage just explained seems to have been that here too intended; and, moreover, Solomon probably meant a *deliberative* or legislative body—to which, in order to obviate all possible misapprehension, we take this occasion to observe that the discussion cannot in any manner apply.

It may now, we submit, be fairly concluded as a general truth, that a plurality of judges ought to count, in respect of the intellectual advantages to the administration of justice, as but so many cyphers on the left side of unity. But, when we consider the temptations to partiality, the means of intrigue, the facilities of escape, the waste both of money to the public, and of time to the parties, which are inherent in this system, it is no longer to be regarded as merely use-

\* *De la Mennais.*

less—the excessive members as so many nothings: they are *worse* than nothing, like negative quantities in Algebra, and turn into the descending series of expense and injustice.

There are a hundred other considerations, which must, however, be shut out for want of space to even indicate them. We can only add, upon this point, the testimony borne by experience to our conclusions. The consequence once attached to number in the judicial functions has been rapidly diminishing. The judicial business of the House of Commons—for which it had long been accustomed “to go into” a *court* (as it still does into “a committee”) of the whole, is now transacted by a few members. And the “other House”—though the high Court of Appeals of the Empire—relinquishes such matters to the handful of “Law Lords.” In fine, the Chancellor in this State and in England, seems to present a living, long-tried example—an *experimentum crucis*—of the unity in question. Has there been heard of more corruption in this court, more suspicion even attached to it with all the disadvantage of a procedure in great part private, than to the Supreme Court or the Court of Errors? Has there been so much? Has the proportion of its decisions reversed been higher than that of the other tribunals of primary jurisdiction, with their five or three judges? The fact would, we suspect, be found, in all these particulars, quite the reverse.

Rule Eight—that thirty-five years be the minimum age of eligibility to any Judiciary of Record. Not the smallest advantage of a provision of this nature, under a constitution like ours, would be the reduction it would necessarily make in the crowd of competitors for office. It offers a cheap and natural test of competency, on the three-fold ground, of maturity of mind, gravity of character, and professional experience; not an infallible test, to be sure, (nor is it necessary it should be, the scrutiny of the electoral body being still behind,) but at any rate quite as good, perhaps, as the certificate (or rather order) of a political “clique.” It diminishes vastly the importance of the trust to the appointing power, at the same time simplifying the exercise of it. Besides its advantages direct and indirect, it would spare us much evil; to mention, here, but the lawyerlings still more in

knowledge than years, who now-a-days are scarce within the Bar, than they begin to aspire to the Bench. A boyish judge is to us as disgusting a spectacle as the poet’s amorous senility.\* Nothing, except perhaps the native dignity of genius, or the graces of a high-wrought education, can palliate the indecency.

The *Ninth Rule* prescribes the principle of *Gradual Promotion*. This we regard as the most important of the catalogue. Only consider the spirit of emulation, with its consequences, moral and intellectual, which, under this rule, would pervade the whole hierarchy of our Judiciary! The dignity and importance which it would bring to every magistrate in his own and in the public estimation, from the lowest, who behold within the reach of honorable exertion the highest station, to the highest, who enjoyed already the satisfaction as well as honor of having obtained it by means so unequivocal. What a school of judicial discipline and development! This regulation would, moreover, raise another barrier against the solicitations of demagogues, and the importunities of partisan pettifoggers—those “barbarians” whose incursions are to be dreaded for our temples of Justice. It would place election or appointment in the Judiciary, by the popular vote, out of the question: indeed, it would leave it a matter of little consequence to what hands the power might be committed. It would be itself a sort of *electoral machine*; and so efficient, that if adopted in full, the preceding rule, and perhaps some others, might be largely relaxed. We entreat our readers to meditate this principle thoroughly. For our own part, we are convinced that no modification of our system likely to be adopted in the contemplated reform—no, not all together—would be so effective to render our Judiciary not merely an able, and (with the prunings hereafter to be submitted) an economical instrument of justice, but also an authoritative guardian of the Constitution and Laws, and, in fine, a much desiderated element of stability in the State.

The only objection we can conceive to this rule is, that it might exclude talent. But this seems of no force. Our proposition would not make the Judiciary hereditary, an official round-robin, or close corporation. It would continue open at

\* *Turpe senilis amor.*—OVID.

one end, and, we imagine, by an aperture quite large enough to admit all the available talent at all likely to present itself.

The *Tenth* Rule forbids that degradation of judge and desecration of justice, called "fees, &c." Money is a necessary thing, no doubt; but there are other things too, no less necessary or useful, which yet decency requires us to keep, on certain occasions, out of sight. It was a wisdom no less than the Divine that drove the money-changers out of the Temple of religion. And he who does not feel something of religious reverence for the Temple of Justice; who can behold the high priest of the place turn the very altar into a counter, whereon to truck his wares, and seize the deposited silver with the avid eye and grasp of a Chatham-street Jew—he who can witness this, we say, (and what lawyer of this State, and especially City, does not, daily?) without feeling an emotion of indignant disgust, may well doubt that he is thoroughly imbued with the spirit of an enlightened citizen or an honest man. We do not wish to dwell upon this matter, nor need we. The Bar are, we know, unanimously opposed to it. The judges themselves would, we doubt not, gladly take a salary in exchange. With the people—the third and most important party to the question—the only consideration can be economy, as they understand it. If, then, it be made to appear that the salaries of the judges may be adequately enhanced, without any considerable additional charge upon the public treasury, and through a reduction (hereafter to be specified) of their actual number, while, at the same time, the bill of costs to the client will be very materially curtailed—this, we say, being proved to the public, there will be no difficulty, we presume, in the way of purging the hands of Justice of these foulest of lawful wages; which, if they may not strictly be called exactions in those who receive them according to law, are, it is to be feared, the cover of gross exactions in others, and the temptations to grievous abuses of the instruments of public justice.

The foregoing ten rules will apply to the organization of all courts of law, primary and appellate. We are to add one or two of peculiar reference to the latter form of judicature.

Our *Eleventh* rule, then, would require, in strictness, that there should be but one general court of appellate jurisdiction. Yet, in view of existing arrangements in this particular, which give us three or

four, and also of the fact that with this file of inferior tribunals, the court of last resort seems to be hardly adequate to its present calendar, it would, perhaps, be too startling to habitual notions to suppose that, under any modifications of our Judiciary, a single tribunal could compass the business, which, at present, engages so many. Yet, would that its adoption depended upon our ability to demonstrate it. However, we should be disposed to retain the appellate jurisdiction of the Supreme Court; only making it concurrent and coördinate in this capacity with the Court of Errors. The one would be resorted to for the highest legal authority; the other for the best popular sanction. But,

The *Twelfth* and last prescribes that the decision upon all appeals, to whichever of these tribunals made, (what is a consequence of the preceding rule,) be peremptory and final; and that all causes whatever, without distinction of quality or amount, be appealable, and to either of these sole tribunals, at the option (under proper penalties for abuse) of the plaintiff in appeal. Writs upon the primary business of the Supreme Court to remain, of course, amenable to the Court of Errors.

Here is theory for you! growls some little proctor in *Certioraris*, who sees a hemisphere between a country justice and the Court of last resort. But if principle seconded by the commonest sense be heard in preference to blind and barbarous usage, we trust to engage for this "theory" a particular and popular consideration.

The system of subordinated appeal we have called "barbarous" only by way of description. It is of the same feudal origin and character as the diversity of primary jurisdictions, condemned under a former rule. Neither, it is well known, was instituted for, however it might have come incidentally to subserve, the convenience of the parties, or the greater security of Justice. The object was widely different. These appeals were—and still are in several of the Germanic States of Europe—regarded not as the rights of the people, of the parties litigant, but of the baron over his vassals, and of the lord paramount, in turn, over the barons; and so on, through the whole catenation of feudatories. This must be familiar to every lawyer at all acquainted with the history of our adopted institutions. And yet lawyers, every day—such is the force of custom, not to say of "costs"—are

heard panegyryzing these things, which it is no democratic metaphor, but, as we have seen, a historical truth, to call badges of servitude, as being the most admirable contrivances—full of Anglo-Saxon wisdom—for the assurance of universal and equal justice!

Now, what is the object of appeal at all? To correct an error, if any be committed, or give rational satisfaction that there has been none. How does common sense direct that this is to be accomplished, with the greatest despatch as well as effect? Obviously, by applying to the best authority attainable, in the first instance. What use then of your intermediate tribunals? They cannot possibly have the requisite authority with the people, their very organization stamping them in fact with inferiority: nor can they, of course, give satisfaction to either of the parties. But what they can do, as consummately as if they were designed for it, is this: at every stage of appeal they double the expense and the delay—they enable the rich client to harass the poor, to frustrate the law—they shake all confidence in even the supreme tribunals—in fine, they infect the people with that most disastrous and demoralizing notion, that litigation is but a species of gambling or adventure. And if it has, in fact, been often compared, in England and this country, to a lottery, the infamy is, we believe, to be ascribed mainly to our system of appellate judicature.

Again: if there be grounds for judicial correction, why should not the best means be as accessible to the small claimant as to the large? It has already been shown that this distinction of amount is utterly fallacious, and that in the eye of Justice as well as of Heaven, the lowest should be considered highest, and the highest, lowest. But the poor man cannot bear the expense of the highest tribunal, you say. Then, I say, you deny the poor man justice, and favor the wealthy in his oppression—which is not very republican. But where is the necessity for this expense?—unless you mean the lawyer's costs. Well, this obstacle we would mitigate in this way, and it will be apparent with how many collateral advantages. In case of reversal the defendant in error should be held to pay all costs; in the

event of affirmation, the *attorney of the plaintiff should have none*. This, besides advancing the interests of justice in other ways, which it might be invidious to particularize, narrows down the question of costs to a definite and known, or knowable, sum, which the parties proposing to appeal, may take into preliminary computation. If he believes he has justice on his side, (and we have left his attorney no interest in misleading him,) he runs but little risk in presenting himself before its most competent tribunal. But if, on the contrary, he would "try the thing merely for experiment," or from passion, he has before him the advocate's fee of fifty or a hundred dollars, than which—so far from being an impediment to justice—it would be impossible to devise a more convenient as well as salutary check upon speculation and vengeance.

With all the foregoing enormities of these intermediate jurisdictions of appeal, we find not one redeeming quality—except it be this, that they lengthen the lawyer's bill. But the profession will, we are sure, be, notwithstanding, found favorable to a change in this matter, were it only to acquit themselves of the plausible imputation of being the real owners of these courts, the inheritors of the feudal barons; with the difference only of having converted the unsubstantial "homage" of the days of chivalry into "good and lawful money of the United States of America."

We might confirm the argument still by the strong examples of our masters in jurisprudence, the Greeks and Romans; in the confection of whose institutions, reason, or at least liberty, had something to do; and which, in no instance, we believe, admitted of more than one degree of appeal.\* In truth, that our system is not merely unjust and irrational, but *quite out of nature*, might be very fairly presumed from the fact that the ingenious Athenians—the "bean-devouring Demos"†—did not fall upon some such contrivance to feed their juridical voracity; especially since they carried the other principle, of the divisibility of jurisdiction, to such pernicious refinement, as to have, in some cases, several courts, for the different degrees of the same offence.

\* Scarce even this. For, the vetoes of the Consul, Prætor and Tribune upon each other's proceedings, merely annulled, but did not readjudicate. Whether it was the same with the Greeks is not clear.

† Aristophanes. An allusion to the litigiousness of his countrymen, who used beans for ballots in rendering their verdict.



We have now deduced, from the nature and objects of the judicial agency in a free State, the rules which should govern the organization of a Judiciary. Then these rules have been confirmed argumentatively—motived, as the French express it so much more neatly—and the principal objections that either have, or might have, been opposed to their application, considered with especial reference to our system, and (we submit) confuted. There seems to remain but that we set in juxtaposition a sketch of this system, to render the simplest of our readers a comparatively intelligent commentator upon this complex and occult subject.

Viewed in respect of territorial jurisdiction, the Law Judicature of the State of New York, is at present divided into three or four classes. 1. The Supreme Court, whose jurisdiction is coextensive with the State. 2. The Circuit Courts; which, in the feudal theory, are but the Supreme Court making, for the public convenience, a tour of Justice, (so to speak,) and, in this migratory quality, restricting its cognizance as to the nature of the subject matter, to questions of fact—as to the extent of jurisdiction, to certain districts denominated Circuits. 3. The county judicatories, limited by the county; and 4. The Justices, who “hold forth” in the lowest political subdivisions, called Towns.

The number of the judges in this State is: of the first class, three; of the second, eight; of the third, about two hundred and eighty-three—five to the county, (New York excepted,) being the constitutional contingent. As to the justices, we must say, with the advertisements, they are “too numerous to mention;” being as plentiful in the country as pumpkins or militia colonels.

These various judicatories are again distinguished, by a sort of cross-division, into Civil and Criminal; according to the nature of the complaint or to the party complaining. But except in matters of mere form, and the change of name into “Court of Oyer and Terminer,” or “Sessions,” the demarkation is faint or vague, in the inferior tribunals, and disappears entirely in the Supreme Court—a practical proof, by the way, of its essential futility.

The sectional jurisdictions are strictly impassable, unless by permission of the Supreme Court, which is termed “changing the venue;” and the permission is granted only in a few cases, and upon

conditions which leave the privilege comparatively worthless.

The judges are *elected* by the Governor and Senate conjointly, and for various periods. Those of the first and second order permanently, until the age of sixty years; the County Judges for five, and the Justices, who are elected by the towns, for four years. All are amovable, in the mean time, by the same electoral authority; only through the different processes (according to the nature of the delinquencies) of Executive motion, or Legislative impeachment.

There is no special qualification of ineligibility on the ground of youth. No principle of promotion, and scarce a *chance*—the “active” and unscrupulous partisan being generally preferred before the ex-judge, however honest, efficient, experienced, whose office had for some time removed him from the field of political desert, by imposing upon him at least an exterior of decency and principle.

The salaries are, to the Judges of the Supreme Court, \$2,500 each, per annum; to the Circuit Judges, \$1,600 each. The County Judges are paid \$2 for each day they actually attend at the Court, whether of the County or Oyer and Terminer. All are allowed besides to exact fees, &c., on the proceeds of which, of course, they have principally to depend for compensation,

With respect to the appellate Judicatories—the “Courts lawyer”—we have just as many as there are tribunals of immediate resort; the Court of Errors, which has no original jurisdiction, canceling the Justice Courts which, of course, have no appellate. For, as the metaphysicians have failed to conceive a stick without two ends, so the lawyers, it seems, with all their reputed subtlety, have been unable to convert these lowest tribunals, like the rest, to the correction of errors, where there was no “court below” to commit them:—appeal, alas! like all else of human contrivance, being subject to the conditions of a beginning and an end. But a great aggravation of the mischief is that these jurisdictions are successive and subordinate.

By comparing this analysis of the system to be reformed or reorganized, article by article, with the previous rules, it will be found to deviate from principle in almost every particular. Having thus brought the various defects with the utmost precision within the reach of easy, of obvious inference, and prepared for each

its appropriate remedy, the application should have been committed to our readers, as a most instructive exercise, even were we urged by the necessity of drawing to a close. And if we, too, like others, still subjoin our plan of reform, it is meant rather for the convenience of comparison, a sort of popular *praxis*, than as a project which there is any design or desire to urge upon the adoption of the future Convention, however happy we should be, for the sake of our State and through her the country's generally, that the suggestions submitted had engaged its attention, as we do not at all blush to believe they deserve it.

Before advancing our own plan—which will complete the scheme of this paper—we should like to give a respectful consideration to those which have been published, we understand, by others, from time to time, upon the subject; but our limits are inexorable. There is one, however, which cannot, perhaps, be thus dismissed consistently with duty, or at least with decency; we allude to the Report of the Committee of Judiciary Reform, made in 1837, by order of the Senate of this State. It must be important to our purpose to avert any conflict, as well as to avail ourselves of any concurrence, of views with a project put forth under the twofold sanction of official authorization combined with professional eminence and experience.

This Commission, composed of Messrs. Cady, Sutherland, and Oakley, (of the Superior Court of this City,) propose the following in reference to the division of the Judiciary under our consideration. We give it in their own words:

"1st. It is proposed to add two judges to the Supreme Court.

"2d. To leave the Circuit Court system as it now stands.

"3d. To organize the counties of the State into Common Pleas Districts, of a convenient number of counties, and to appoint a presiding Judge for the Court of Common Pleas and the General Sessions of the peace for each district; whose duty it shall be to preside in the Courts of Common Pleas and the General Sessions of the peace of the (several) counties belonging to his district."

This has one merit at least—it is short; but it is also not free from a common incident of this quality—it is obscure. Not to criticise the loose and scarcely proper phraseology of the third article, it gives no intimation whether or not the

actual system of Common Pleas and General Sessions was to undergo any modifications, as to the number of Judges, time and place of holding terms, &c., in consequence of the superaddition of the District Judge and jurisdiction. The bill, indeed, which accompanies the report, supplies this omission, (in part, inferentially,) by overstepping a little its proper basis. These things should be conceived and enunciated with some definiteness and skill. They are matters of *form* to be sure; but form, *our* law framers ought to begin to know, is sometimes the veritable substance.

However, reduce the terms, as the bill suggests, and to even the lowest possible number, how is an individual Judge to preside (unless by mesmeric presence) in the several Courts both of Common Pleas and General Sessions of his district, supposing the plurality of counties in each district to be at all considerable? And if the number be small enough to bring the presidency in question within the limits of practicability, we are placed on the other horn, of multiplying Judges (that is to say salaries) already deemed too numerous; and, moreover, in a department for which the committee itself informs us there is little or nothing to do in the existing establishment.

"But to get it something to do is our very purpose," say the committee: "we design to retain in the County Courts much of the business now carried up to the Supreme Court; and this we expect to accomplish by elevating the character of the local tribunals, through the District system." Very well!—(though the *object* appears to be merely *professional* and the *means* rather cumbrous and costly),—in the first place, this arrangement will of course, according to the hypothesis, proportionably diminish the business of the Supreme Court. Accordingly a reduction of the Judges of this tribunal would, consistently, be a part of the Committee's plan. At least they ought to be content with the present. On the contrary of all this, they propose an addition of two more!

Again, we are told by the Committee that the County Courts in the country are at present nearly deserted—chiefly in consequence of their incapacity. There can be here, then, no pretext, on the ground of business, for retaining several Judges to each Court; and that they do not serve to bring it ability or public respect is asserted by the Committee's own

plan of the District system, whose express end is to create or improve those requisites; and had been proved, indeed, by us, above, from principle, to be a fallacious notion of the vulgar. Why then retain quartered upon the people three or four Judges in each county, admitted by the Committee's project to be good (as the saying is) neither for use nor ornament! a troop of supernumeraries who, at least any longer, can serve but to embarrass the action of the Court and disparage the office of the Judge; abundance of even the best things, like familiarity, being sure to beget contempt. This seems to us a gross disregard of economy, and an equally negligent violation not only of recognized principle, but even of the common degree of consistency.

The town or Justice judicatories, the Committee do not touch at all, though in great part blended with the Common Pleas system which they propose to reorganize. The Circuit system, while retained as above, the Committee, after mentioning several modes of change, recommit to the discussion of the Legislature: as much as to say, an alteration is needed, but what or where, these deponents do not say; and, therefore, in turn, commission you, as you have done them, to determine.

Such are a few of the more obvious, or easily exposed, of the defects of this Committee's plan of judicial reform. Our cursory comments are confined, it will be observed, to *internal* consideration of it—a comparison of one part with another, or at farthest, with the arrangement proposed to be amended. Were it to be judged on the high ground of science or system, and by the rules we have established, it is moderate to say, it would be found superficial, incomplete, and even as far as it goes undigested in the extreme. There are but two particulars which, by any elasticity of construction, we are able to convert to our purpose: the District system, which, however, we will have to modify radically; and the reduction of the members of the Court of Errors to the elder class of the Senators. The latter we adopt without alteration; not that it satisfies us, but that it is a liberal step in the right *direction*, and as far as we can expect to advance at present. There are, also, we are bound to acknowledge, some remarks up and down through the Report, which it would be gratifying, had we the space, to bring in testimony of the plan which we now proceed to submit. We propose, then,

1st. That the Justices' Courts be abolished. This, of course, not to affect the Special or Police Courts of this, or the other cities; which belong to the Correctional department of the Judiciary.

2d. That the Common Pleas Judges in each county be reduced to two; who shall hold separate courts, and by brief circuits, within the county, and in the distinct capacities, 1st. Of trying causes by summary procedure, (in the present mode of the Justices' Courts)—not however according to the amount litigated, but as the parties may choose to apply to the court sitting in this quality; and 2d. Issues of Fact joined in their proper courts; besides this, both to hold, say twice (or oftener) a-year, a Court in Bank, conjointly with a presiding member to be described in the next article.

3d. That the counties of the State be divided—with all practicable reference to population—into districts of three (or more) to each; and that to every such district there be assigned one judge, whose attributions, like the county magistrates, shall be of a two-fold grade and character, viz: 1st. He shall preside in the Common Pleas of the counties in his district, at arguments of questions of Law, and in the *Oyer and Terminers*, in prosecutions for misdemeanors; and 2d. He shall hold a district court, for issues of fact from the Supreme Court, within his jurisdiction. To this officer shall also devolve the miscellaneous business now committed to the circuit judge.

4th. That the circuit system be abolished; the incumbent judges to be retained in one of the districts falling within their circuits respectively. The Supreme Court to remain unaltered.

5th. That only the elder class of Senators, or those of whose term of service two years shall have expired, be entitled to a seat in the Court of Errors.

6th. That the Common Pleas have full jurisdiction concurrently, with the Supreme Court, within the county, and with the adjacent county courts, at the option and mutual consent of the parties; which consent to be taken before their proper county judge.

7th. That the Supreme Court and the Court of Errors be the sole tribunals of Appeal: the former in respect of the inferior judicatories; the other, generally, but either final.

8th. That vacancies be supplied, in the district courts, from the county judges; or in the Supreme Court, from the district

judges ; and that no person be eligible to the place of judge in any of our courts, under the age of at least thirty-five years.

9th. That the judges remain elective, in all other respects, and amovable, as now ; only that the term of office of the county judges be extended to seven years, and the provision disqualifying judges at the age of sixty be repealed. The district judges, (like the Circuit, whom they substitute,) to hold, of course, for life.

10th. That the judges be paid by salary—only and adequately—and respectively from the treasuries of the county, the district, and the state.

The reader is solicited to compare carefully the preceding scheme with what we have premised in this paper respecting both the requisites of a judicial system in general, and the condition and defects of the particular judiciary to be reformed—of both which discussions it professes to be the direct result, only somewhat modified, in obedience to circumstances ; also, with our comments upon the plan reported by the respected Committee of the Senate. If this be done with due attention, and our method of developing the whole subject be marked, we can conceive but little need for further illustration. Only one or two remarks, therefore, and we conclude.

The main or sole end of the plan proposed by the Committee alluded to, would seem to be, the most laudable (though a local) one of improving the character, moral and intellectual, of the county judicatories, ascertained to be suffering in these respects from the sinister influences of certain associations incident to their narrow, fixed sphere, and the insufficiency of the compensation to procure suitable ability. The object is of the first importance, as far as it is carried. But why not extend it to the town justices ? Without this, the reform of the Committee was not only imperfect, but was miserably inefficient even for its limited purpose. They do not touch the root of the evil, which lies in the justices' courts—those scandalous burlesques upon all justice and judicature. At least, such is our own observation in several and select instances in the country ; in some of which (the court being held in a tavern) the "squire" and one or other of the parties or their proctor might be seen, by way of interlude to the farces called trials, to step back and forth, from the bar of Justice to the bar of Gin. Now if this be in any degree of generality the case, (and we

should be happy to find ourselves mistaken,) it is manifest that no contrivance whatever could avail to give character, regularity or decency to tribunals so closely connected with a contamination of this sort, as are the county courts of Common Pleas with the town justice system—especially by *certioraris*, which seem to make the same figure in the country that *habeas corpus* does, in this city. Under this impression, we are convinced that any systematic reform of our judiciary should begin with the "justices' courts."

But while proposing, ourselves, its entire abolition, we have been careful to preserve what alone it was peculiarly designed, or good, for—its summary procedure ; which has been attributed, it was seen, to the two county judges, in their itinerant capacity. Besides thus removing this clog upon the Common Pleas system, our *positive* contrivances for its elevation in character and intelligence, though much of the same nature, are, we submit, a farther improvement upon the Committee's. Its jurisdiction is made locally concurrent with the Supreme Court ; and it is still farther approximated to it by a medium more palpable to popular apprehension—the district judge—who is constituted a member of, and thus a link between, both these judicatories. But this, besides contributing (among other coöperative influences which may be observed only in the *system* of our plan,) to give dignity and ability to the county courts, gives at the same time compactness and efficiency to the whole machinery of our Judiciary. A consequent acceleration of despatch is capable of demonstration. And as for the economy, our retrenchment of the salaries or the compensations, small or large, of two or three hundred judges, expenses of court-houses, attendance, &c., is matter of simple computation.

One of the strongest recommendations of our plan, however, (if it be allowed to have any,) is the provision for maintaining the complete independence of the Judge. Without this grand requisite all other qualities in a Judiciary, circumstanced like ours, must be imperfectly operative and fatally insecure. With it we shall have been provided in our Judiciary with a capital desideratum in popular government. What our institutions want, is to strike root somewhere ; to have something fixed to hold to, when the day of storm comes ; which is not the less



inevitable for not being yet apparent to ordinary perception. We insist, therefore, upon ample salaries to the judges as a principal means of securing this independence. Look at the salaries of the British Judges:—the Chief Justice of the Queen's Bench about \$30,000; a Puisne Judge, \$20,000; the Lord Chancellor from \$80,000 to \$100,000! Or if you will not, (for the profound reason that these are the magistrates of a "monarchy,") look, at least, at the salaries of the sister States of the Union. We find the aggregate amount of the salaries paid the Judiciary of the State of New York to be, according to population, *two and a half times less* than the average rate of six of the larger States, and *three and a half times less* than that of six of the smallest States, of the Union. This, our people may be assured, is expensive economy. At all events, there can be here no objection, even on this fallacious ground, to the enhancement we propose; the reduction of the judicial establishment leaving a fund which will be amply sufficient for the purpose. And that nothing may be left undone to enforce its importance, we again recur to the authority of the first of statesmen and the most minutely comprehensive, perhaps, of human intellects—not excepting Aristotle.\*

"In the first class," (says Burke in his Speech on Economical Reform,) "I place the *Judges*. It is the public justice that holds the community together; the ease, therefore, and the independence of the judges ought to supersede all other considerations, and they ought to be the very last to feel the necessities of the State, or to be obliged either to court or bully a minister, (*à fortiori*, a multitude,) for their right: they ought to be as weak solicitors in their own demands, as stren-

nous asserters of the rights and liberties of others. *The Judges are, or ought to be, of a reserved and retired character, and wholly unconnected with the political world.*"

We beg to say, in conclusion, that there is not a particular of our plan, for which, as well as for the preceding, we could not produce the highest sanctions, both practical and scientific. We, therefore, confidently invite criticism, if only accompanied with candor, and especially *intelligence*. It will not do to say, for example, "The circuit system works well," or "The justices' courts were popular," &c. This would be puerile and purblind. It may be all true, and yet other arrangements "work" better. Or suppose them perfect, a slight change of some other parts of the fabric to which they belong, may disorder, so as to render them wholly or partially useless, if not pernicious. In short, that in this as in all other systems, the "good" or "bad" of the parts, is a *relative* consideration—that is to say, depends on the relation of the particular part to every other and to the whole—this, we say, is but the A B C of critical competency in the matter in question. Farther, we may protest that we have written without bias, from profession, party, or theory. We address ourselves, without distinction of party, to that portion of the people, politicians or not, who can regard the reform in contemplation, from higher and holier, than partisan, grounds. To such alone we offer the foregoing views, such as they are; and we trust it will not derogate from the gravity of the subject or the occasion, if we do so, deferentially, in the words, as the spirit, of the poet:

"*Si quid novisti rectius istis,  
Candidus imperti; si non his utere,*" &c.

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\* We *really* cannot agree with a person who writes letters about "American Literature" in the *National Intelligencer*, in rating Edmund Burke, in oratory as well as statesmanship, below Mr. Webster. Mr. W. is too worthy of just, and too sensible of judicious, eulogy, not to be the first himself to repudiate such beplastering as this. But it was probably unnecessary to notice the opinion of a man who sets himself to prove to us that we are quite rich in a national literature, by raking up a catalogue of publications which are admitted by the purpose of his own argument, to have never been heard of in their native country, and, of course, not in any other. An ignorance, this, on the part of our good people, certainly equal to Monsieur Jourdan's, that he had been speaking prose all his life.

## THE TRUE DEATH.

BY WILLIAM WALLACE.

GLOOMILY strikes the coward Blast,  
 On the sad face of the Mere;  
 To and fro are the poor leaves cast,  
 To and fro:  
 The Year will soon be a dying year,  
 As He goes, We must go.

## I.

All day, the melancholy day,  
 Where wept the mountain-rills  
 And Autumn sobbed her soul away  
 Amid the solemn hills—  
 All day, the dark November day,  
 His feet went rustling over the leaves,  
 His hands were clasped together:  
 Alas! that One so wildly grieves  
 In this the wildest weather.

## II.

I watched him through the weary day  
 That made perpetual moan:  
 I could not, dared not let him stray  
 In the grim wood all alone;  
 I watched until the gloaming time;  
 His forehead wore a stedfast calm,  
 His eyes were without motion;  
 Sometimes he seemed to murmur a psalm  
 Like a hermit at devotion.

## III.

The sere grass sighed along the ground,  
 The sere boughs grieved on high,  
 A single cloud lay half-way round  
 A solitary sky—  
 A dim sea tossed and wailed afar:  
 He looked below—he looked around,  
 But never spoke a word;  
 He only heard the wind's low sound  
 Forever sighing, sighing,  
 Like the mournful voice of a mateless bird  
 Through the dark wood slowly flying.

## IV.

Suddenly over all the scene  
 Fell down a spectral glare,  
 And swarthy forms of giant mien  
 Peopled the wood and air  
 An instant, looked at him, and cried  
 "Lost! Lost!" then, silent, sank from sight,  
 Like clouds a moment swelling,  
 And then as quickly taking flight  
 Back to their unknown dwelling.

## V.

At eve the wind went down.—The Stars  
 Came out serene and cold :  
 He passed across the forest-bars  
 Into his mansion old,  
 A noble pile five centuries old :  
 It stood as ancient great Thoughts stand,  
 Though somewhat dim and hoary,  
 Forever flooding all the land  
 With sanctifying glory.

## VI.

I followed him : he sate him down  
 Within the Western room ;  
 The Darkness loured like a frown  
 On the rough brow of Doom ;  
 The Silence leaned her film'd ear  
 And brooded in the breathless hall  
 Never a death-sound hearing,  
 And the shadows clung along the wall  
 As if the Silence fearing.

## VII.

So passed an hour, a weary hour—  
 When opened the antique door,  
 And music from an unseen power  
 Rolled softly over the floor—  
 An hundred fire-eyes filled the gloom.  
 He started up and cried—" Away !  
 Spirits ! why throng ye round me ?  
 Ah, vainly breaks a bond of clay !  
 THE DEATH has won and bound me "

## VIII.

The eyes moved not. " I die ! I die !  
 My heritage is lost—  
 The glorious sea of yonder sky  
 Lined by a starry coast :  
 The very Life of Life hath fled.  
 Ah ! once my sail was sheeting home,  
 Wind and Tide together flowing,  
 And I saw the broad, eternal Dome  
 In the shadowy distance glowing.

## IX.

I saw the Mighty of the earth,  
 The Thoughtful and the Fair—  
 The Stars of Dust, the Souls of Worth  
 In dread assembly there ;  
 It seemed the Bard of Paradise  
 Was harping to a stately throng,  
 And from the throned places,  
 Enraptured by the wond'rous song,  
 Leaned listening angel-faces :—

## X.

And ever at the pauses rolled,  
 From all the silver thrones  
 Down through the Deeps of cloud and gold,  
 These solemn undertones—  
 ' At last did He unveil His form

Over the long expectant Space;  
 From Chaos passed the deadly curse,  
 And like a mirror to His face  
 It sparkled back the Universe.'

## XI.

Far in a rosy bower's shade,  
 Where twilight hues were cast,  
 I saw the form of One that made  
 A music when she passed  
 In light amid the conscious flowers:  
 How, like a star, she looked at me  
 Between the parted leaves,  
 And cried, 'I still shall watch for thee  
 In Heaven's golden eves.'

## XII.

All these I heard and those beheld,  
 Though married to the dust;  
 Another realm before me swelled—  
 The Beautiful—the Just:  
 Imagination pointed there—  
 She only of the eye serene,  
 Who glorifies the Lower;  
 She of the bright melodious mein,—  
 World-Maker and World-Shewer!

## XIII.

But Evil fell on me and Pride.  
 —What Evil and what Pride?  
 I looked below—I looked above,  
 I saw not—would not see THE LOVE;  
 As yet a Tenant of the sod,  
 Poor worm! I dreamed myself a God,  
 When Gods lose half of Paradise;  
 For Love and Power divide the Zone,  
 And each a pillar of the Throne—  
 Majestically side by side.  
 Even at their base I wedded Pride:  
 The very Life of Life grew weak;  
 For Life is only of the Soul;  
 The Body has a being—  
 This gives the crimson tide its roll;  
 To Soul belongs the Seeing.

## XIV.

I loved no more the song of Birds;  
 No more the chant of Seas;  
 And swept the sound of Childrens' words  
 Like curses on the breeze;  
 But sweetly shrilled the savage trump:  
 I loathed the Nations and the Days  
 Through Time's Abysses going;  
 For they seemed to me majestic Lays  
 To God forever flowing.

## XV.

I stood and saw the sea of Crime  
 Plunge over all the land:  
 'Plunge on!' I cried, 'take every clime!



I never lift a hand !  
 The Lovely sunk before my gaze ;  
 The Worthy wailed alone for bread,  
 The Feeble fed the Stronger—  
 I laughed to see their charnel bed,  
 And smiled upon the Wronger.

## XVI.

And others smiled when I did smile ;  
 I cannot know *their* fate :  
 Death builds for *me* the avenging pile ;  
 His lands are *my* estate :—  
 I thought the Thought that hath no name.—  
 Then Spirits ! leave me in the gloom  
 Around me fitly lying—  
 I cannot go beyond the tomb—  
 Body and *Soul* are dying.”

## XVII.

A sudden wail ! the fire-eyes closed ;  
 Soft music filled the air :  
 Again the Western room reposed,  
 Silent as tired Despair.—  
 Then burst the round fire of the moon  
 From out the clouds ; a lustrous face  
 Still fondly lingered in the place,—  
 A gentle face, with tearful eyes,  
 That looked at him—again—again—  
 Then faded, like a tender strain,  
 Into its far-off Paradise.

## XVIII.

He did not stir :—To him I spoke ;  
 No answer came :—all night I stood  
 A watcher in that solitude ;  
 But when the pilgrim Sun walked o'er  
 Morn's azure bridge, and men awoke  
 Beneath his stately stride,  
 A form lay pallid on the floor,—  
 A something rested by its side—  
 A featured something cold and bare  
 That seemed a semblant shadow there—  
 Feet to feet and head to head :  
 It moved not when I moved the frame,  
 But lay all rigidly the same :—  
 BODY AND SOUL WERE DEAD.\*

Gloomily struck the coward Blast  
 On the sad face of the Mere ;  
 To and fro were the poor leaves cast,  
 To and fro :  
 The year will soon be a dying year ;  
 He is but the heir of a coal-black bier ;  
 As He goes, We must go.  
*November.*

\* This poem is an attempt to work out the mere ideal conception of the utter loss of the life of a *Soul* which from intense and chronic (if I may be permitted to use the phrase,) wickedness, had forfeited its right to a future existence—or, in other words, which had absolutely destroyed, by its own action, its power of *being*. Readers will permit the author to enter his protest against “a theological aspect.”

## THE FRENCH MORALISTS.

LA BRUYERE, MONTAIGNE, NICOLE.

THE French are perfect masters of the philosophy of manners, or as they term it, "*science du monde*;" whether they are equal proficient in the philosophy of morals or of mind, may admit of a question. To account for this is by no means difficult. It arises from their social disposition and natural readiness of apprehension. Commerce with the world sharpens their original acuteness, and renders them expert in detecting the nice shades of character and the more visible peculiarities of manner. Though mannerists themselves, yet are they extremely skillful in analyzing and painting the manners of others. This national trait is observable in most of their celebrated writers. It shines brilliantly in the pages of Molière and Le Sage, and forms the staple of their writings. In fact, their authors are perfect men of the world, and cannot be otherwise than shrewd and knowing. We know not how it is, but there seems to be something in the very atmosphere of France imparting vivacity and a full flow of animal spirits. Such men cannot realize a character like that of the old-fashioned scholar of whom we read—a man burying himself amidst his folios, and turning his library into a living tomb—who was willing, for the sake of conversing with the mighty dead, to surrender his right to the society of the living great; a monkish idolator at the shrine of books, who, striking off his name from the roll of the world's citizens, resigned his place to some more enterprising and bustling individual. This presents an anomaly no Frenchman can ever resolve. In literature this spirit has not only pervaded their lighter writings, but it also mingles with their graver speculations. Shrewdness is the distinguishing feature of their ethical philosophy, as delivered by Rochefoucault and La Bruyère. With this shrewdness is mingled a scholastic formality, derived from their avowed imitation of the ancients, giving their productions an air of great stiffness and rigor. They want the ease, the familiar tone, and the natural logic of the English writer in the same department. And here we may see the best proof of the axiom, that they, whether writers or speakers, who are the

lightest and most agreeable on gay topics, are on grave subjects the most stupid and tiresome. It has been said of such an one, that "his hawk's eye, which sparkled at a jest, looked blank at a speculation." Besides this, they are greatly deficient in fancy, and therefore are without that which gives life and spirit to philosophic writing—the power of illustration. Figures, metaphors and similes never appear in their writings; but everything is delivered in an oracular manner, never relieved by the embellishments of composition.

Yet it is on the score of originality that they are mostly wanting. There is no boldness or freedom in their theorizing, no variety or marked expression in their phraseology—all is correct, classic and borrowed. Such a writer as Berkely, for instance, would make the whole nation stare (maugre their politeness) by the poetry of his style and the brilliancy of his paradox. All this we think true of their attempts in moral writing. In the ranks of highly civilized society, as well as of common life, they reign supreme. Their best novels and comedies are full of just and striking pictures of life, and are the best specimens of their every-day philosophy. Of the French writers, however, who not employing fiction for the purposes of instruction, have spoken out the truth plainly in works of sober reason, La Bruyère stands foremost. To estimate his writings and ability with justice, we should consider when he wrote, and his topics of discussion. In his time there had appeared no Spectator, no Tatler; there were no manuals of popular philosophy and criticism, nor any general observer and censor of the characters and manners of the age. For having been among the first of his nation to note down, discriminate, and reflect upon, the persons and occurrences passing before him, and the thoughts and observations of his own mind, he certainly deserves high consideration. It is true many opinions, then new and lately discovered, are mere truisms now; this, though it diminishes the value of his book, by no means lessens his own merit. The same might be asserted of all the old writers, yet would it

be harsh in the extreme to deny their genuine originality. The title of his great work is, "The Characters; or the Manners of the Present Age." It has the great merit, which very many cannot claim, of declaring its aim and general scope. "I borrowed," says he very modestly, "the subject matter of this book from the public." And richly has he repaid the debt. It is a general epitome of his observations and reflections on a variety of subjects, all deeply interesting to every man of sense and discernment. He ranges from polite learning to the pulpit, and carefully traverses the intermediate grounds. Society and the passions which exist there, the faculties to insure success in it, and the manifold hues of those who mingle in it, are however, his grand and favorite theme. His characters are almost purely artificial. In painting these he is very happy; but all his skill deserts him when he takes up one purely natural. In addition to this all his portraits were contemporaries, giving a local character to his work, which must have made it, as indeed it was, highly popular at the time, though since much neglected. But though local and mostly artificial, with but very few exceptions he still touches off their traits in a masterly style. Perhaps no man ever lived of a finer or more delicate vein of observation. He gives the broad features and the subtler parts of a character with equal fidelity, force and finish. Passing over his portraits of bishops and dukes, for whom nobody cares a rush, we will enumerate but four, each of which is perfect. The absent man, made famous by Addison's mention of him in the *Spectator*, is most admirable. As it may be readily turned to, we will not quote it, but give the three others, of Rabelais, Lafontaine, and Corneille—three Frenchmen in whom he took generous pride, and writers whom no subsequent critic has ever anatomized with one half of his skill. The translation is by Rowe the dramatist.

"Rabelais is incomprehensible; his book is an inexplicable enigma, a mere chimera; a woman's face with the feet and tail of a serpent, or some beast more deformed; a monstrous connection of fine and ingenious morality with a mixture of beastliness; where 'tis bad, 'tis abominable, and fit for the diversion of the stable: and where good, it is exquisite, and may entertain the most delicate."

The following is a portrait of Lafon-

taine—a fac simile of our delightful English poet, Gay :

"A person who appears dull, sottish and stupid, knows neither how to speak or to relate what he has seen. If he sets to write, no man does it better; he makes animals, stones and trees talk, and everything which cannot talk: his works are full of nothing but elegance, ease, natural sense and delicacy."

Corneille concludes the noble triumvirate.

"Another is plain, timorous, and tiresome in conversation, mistakes one word for another, and judges not of the goodness of his writings but by the money they bring him in; knows not to recite or to read his own hand. Leave him to compose and he is not inferior to Augustus, Pompey, Nicodemus and Heraclius; he is a king and a great king, a politician, a philosopher; he describes the Romans, and they are greater and more Romans in his verse than in their history."

It was seldom, however, he had such men to sit to him for their portraits; he passes short but pithy criticisms on Molière, Bossuet, and several other of his great contemporaries; but on none is a judgment passed more fastidiously correct, or a compliment more delicately as well as heartily expressed, than on those just quoted.

His particular excellence, however, lay not as much in portrait, as in general reflection. He had a thorough knowledge of the heart, and could trace with unerring skill the sinuous windings of the affections. He was also completely acquainted with all the mixed modes of artificial life. On all serious topics he is earnest and apparently sincere, nor did he fall into the slough of French Philosophy—atheism. On the contrary, he never alludes to the Supreme Being without respect and awe. His general cast of mind was that of one governed by the strictest rules of propriety, not one anxious to be distinguished as well by a glaring defect as anything else. Judgment predominated over his other faculties, though he also possessed keen wit, the acutest penetration, fine sentiment and finished taste. As an author, though far from voluminous, his only other works being a translation of Theophrastus' characters, and a few addresses to the French Academy, he is remarkably well versed in all the arts and niceties of composition. To substantiate this latter assertion we will produce only three or four passages.

"'Tis as much a trade to make a book as to make a watch; there's something more than wit requisite to make an author."

"We think of things differently and express them in a term altogether as different: by a sentence, an argument, or some other figure—a parallel or a simple comparison, by a story at length or a single passage—by a description or a picture."

"To express truth is to write naturally, forcibly and delicately."

"The pleasure of criticising takes away from us the pleasure of being sensibly touched with the finest things," &c.

"A modern author commonly proves the ancients inferior to us in two ways, by reason and example: he takes the reason from his particular opinion, and the example from his own writings."

"Terence wanted only warmth. What purity, what exactness, what politeness, what elegance, and what characters. Molière wanted only to avoid jargon, and to write purely. What fire! what nature! what a source of good pleasantry! what imitation of manners! what images! what satire! What a man might be made out of these two comic writers!"

We might multiply extracts, but must give others of a different kind. To determine his fine insight into the ways of the world, pages might be taken almost indiscriminately from the body of the work, but a few sentences must suffice. The following sentences are worthy of the subtlest politician that ever "schemed his hour upon the stage."

"He is far gone in cunning, who makes the people believe he is but indifferently cunning."

"Among such as out of cunning hear all but say little do you talk less; or if you will talk much, speak little to the purpose."

"What a subtle contrivance is it to make rich presents in courtship, which are not paid for, but after marriage are to be returned in specie!"

"We can't forbear even the company of those persons whom we hate and deride."

One would think the writer must have been a mere knave and an arrant dissembler, yet was he a man of almost feminine sensibility. This at least should prove it, (allowing his sincerity:)

"A fine face is the finest of all sights; and the sweetest music the sound of her voice whom we love."

And this:

"There are some pleasures to be met with in the course of life which are so dear to us, and some engagements so soft and tender

though they are forbidden, 'tis natural to desire at least that they were allowed. Nothing can be more charming than they, except the pleasure of knowing how to renounce them by virtue."

Yet other more worldly maxims displayed his knowledge of the inconstant fair.

"The woman of the world looks on a gardener as a gardener, and a mason as a mason. Your recluse ladies look on a mason as a man and a gardener as a man."

"Some ladies are liberal to the church as well as to their lovers; and being both gallant and charitable, are provided with places within the rails of the altar, where they read their billet-doux, and where, for anything you can see of them, you would think them at their prayers to Heaven."

"The woman who has her eye constantly fixed on one particular person, or whose eyes you may observe constantly to avoid him, makes us conclude but one and the same thing of her."

"The women are at little trouble to express what they do not feel; the men are at less still to express what they do."

"Sometimes it happens a woman conceals from a man the passion she has for him, while he only feigns the passion he has for her."

The last sentence reveals the acme of finesse in the mere Art of Love, as practiced the world over, but such as a Frenchman only would be likely to remark.

His idea of the pleasantest company, is after all the true one:

"The best society and conversation is that in which the heart has a greater share than the head."

We might quote pages, if not the entire volume, but we shall content ourselves with only these epigrams, as full of wit as of wisdom.

"There are two ways at Court of dismissing or discharging servants and dependents—to be angry with 'em, or make 'em so angry with us that they resent it."

"The Court is like a marble structure—that is, very hard but very polished."

"'Tis possible to have some people's confidence, without having their hearts; but he who has the heart has no need of confidence—every thing is open to him."

"In friendship we only see the faults which may be prejudicial to our friends—in love we see none but those by which we suffer ourselves."

In fine, the mind of La Bruyère was not one of great capacity, nor of extreme



loftiness, nor yet was it very profound; but it was as nice, delicate, acute, and of as fine a grain, within its limits, as that of any man that ever lived.

There is but one other French author with whom La Bruyère can be compared, and that is Rochefoucault; though the latter has published so little that he can hardly be called an author. Still he is an original thinker, a character few authors can boast. They were both of them men who looked upon the world and its doings with the calm eyes of philosophers and men of the world. They had both the same solidity of judgment and quickness of observation. As writers they both exhibited powers of great condensation, and employed the same brilliant style.

The general character of his morality is not of a very lofty or unattainable nature, but suited to men of business and men of the world. He was in prose what Pope was in poetry, the author for the man of sense. He further possessed a great deal of true wit of the kind that grows out of shrewdness and satire. Although he never (wisely) pretended to form a system, or pompously to usher in a new discovery, yet he has certainly said some new things on the most familiar topics. Where the matter of his remarks is old the manner compensates for it. The latter is fresh and sparkling, and produces the same effect upon the reader as fine elocution does on an auditory.

La Bruyère we have placed foremost in the list of French moralists, although Montaigne in point of time comes first, and in the opinion of many in point of excellence also. The latter moralist is more of the author, however, and the style (the perfection of prose epigram) is classic; while Montaigne, doubtless the greater man and bolder thinker, has much less of the artist and professed author about him. Why Charron is called by Pope more wise, whether in irony or from the title of his work of wisdom, (no very strong proof of his possession of it,) we agree with Hazlitt in thinking an enigma hardly worth the solution. In point of fact, Charron is a mere cold transcriber of the morality of the ancient philosophers. Pascal, a far higher name, lies quite out of the scope of our present criticism, being rather a devotional than a merely moral writer in his *Pensées*.—Stephens has done all for his fame that is necessary; yet the same brilliant writer has neglected, (if we do not strangely mistake,) in his article on the Port Roy-

alists, even to mention the name of Nicole, a writer worthy to rank with La Bruyère, and of whom we shall speak by and by. Vauvenargues closes the brief catalogue of choice writers upon the moralists, among the French wits. We shall reserve the favorite of Bulwer for a future paper.

Meantime we proceed with our present purpose, and present the reader with sketches of Montaigne, by his eminent critics: the one, (Mr. Hallam,) rather a historian than a belles letter-ist, and generally cold, yet who quite forgets his indifference in speaking of Montaigne, while he is at the same time altogether judicious and discriminating; the other, Hazlitt, the chief of modern critics, whose admirable literary portrait supersedes the necessity of an original draught, that could after all be little else than a copy. We append the two criticisms as a literary study, also affording a fine contrast, and the opportunity of comparing. "The Essays of Montaigne make, in several respects, an epoch in literature—less on account of their real importance or of the moral truths they contain, than of their influence on the taste and opinions of Europe. They are the first *provocatio ad populum*—the first appeals from the porch and the academy to the haunts of busy and of idle men—the first book that taught the unlearned reader to observe and reflect for himself on questions of moral philosophy. In an age when every topic of this nature was treated systematically, and in a didactic form, he broke out without connection of chapters, with all the digressions that levity and garrulous egotism could suggest; with a very delightful, but at that time most unusual, rapidity of transition from seriousness to gaiety."

The chief defect of Montaigne's manner arose from perhaps one of the most pleasing traits of his intellectual character: he was a loose and rambling writer, because he was an unconstrained and independent thinker. His style is rarely terse, but his thoughts are never formal or pedantic. He was, as a writer, so much of the familiar gossip as to lose the strictly literary and philosophic character. He had no system of his own, but then he had many good thoughts on all the systems of the speculatists. No conventionalist in his opinion or habits, he neglected, perhaps a little too much, the proper restraints of style and artistic form. Yet out of his defects arose some of the fore-

most of his excellences. If he is rambling, he is also comprehensive; his mind took a wide scope, that included much that might have been omitted. Many of his quotations, perhaps, only serve to precede equally fine thoughts of his own, or to fire his invention with the desire of rivalry. He is often tedious from an excessive love of detail, from a painful love of the truth, or from a constitutional ingenuity that required to make the most of every thing. To a modern reader, the great evil of his style is his want of precision and concise force. He is apt to look on all sides of a subject, rather than directly at it. He swoops widely before he pounces, hawk-like, on the very heart and vitals of his theme. He is not, however, to be judged as critically as later writers. In his day the French language was not formed, and hence his style, or rather no style, is not to be scrutinized too closely.

The sketch of Montaigne has been often drawn. His prodigality of quotation rivals even old Burton's. His obscenity, a literary taint similar to that of Rabelais, Sterne, Swift, Smollett, and Gibbon. The inappropriate titles to his chapters, &c., have been sufficiently noticed.

On the favorable side, how much can be said for him of his admirable practical sense, his wide toleration, his humanity, his wide and just views of life and the human heart, his fine unerring judgment of men and books, his cordiality, his honesty, his genuine feeling. But all this has been so much better said than we can possibly repeat it, by an eminent critic, Hazlitt, in one of his most admirable critical analyses, that we transcribe his literary portrait of Montaigne, equal to a fine painting by Sir Joshua Reynolds.

"The great merit of Montaigne, then, was that he may be said to have been the first who had the courage to say as an author what he felt as a man. And as courage is generally the effect of conscious strength, he was probably led to do so by the richness, truth, and force of his own observations on books and men. He was, in the truest sense, a man of original mind; that is, he had the power of looking at things for himself, or as they really were, instead of blindly trusting to, and fondly repeating, what others told him that they were. He got rid of the go-cart of prejudice and affectation, with the learned lumber that follows at their heels, because he could do without them. In taking up his pen he did not set up for a philosopher, wit, orator, or moralist, but he became all these by merely

daring to tell us whatever passed through his mind in its native simplicity and force, what he thought any ways worth communicating. He did not, in the abstract character of an author, undertake to say all that could be said upon a subject; but what, in his capacity as an inquirer after truth, he happened to know about it. He was neither a pedant nor a bigot. He neither supposed that he was bound to know all things, nor that all things were bound to conform to what he had fancied, or would have them to be. In treating of men and manners, he spoke of them as he found them, not according to preconceived notions and abstract dogmas; and he began by teaching us what he himself was. In criticising books, he did not compare them with rules and systems, but told us what he saw to like or dislike in them. He did not take his standard of excellence "according to an exact scale" of Aristotle, or fall out with a work that was good for anything, because 'not one of the angles at the four corners was a right one.' He was, in a word, the first author who was not a book-maker, and who wrote not to make converts of others to established creeds and prejudices, but to satisfy his own mind of the truth of things. In this respect we know not which to be most charmed with, the author or the man. There is an inexpressible frankness and sincerity, as well as power, in what he writes. There is no attempt at imposition or concealment, no juggling tricks or solemn mouthing, no labored attempts at proving himself always in the right and everybody else in the wrong: he says what is uppermost, lays open what floats at the top or the bottom of his mind, and deserves Pope's character of him, where he professes to

'— pour out all as plain,  
As downright Shippen, or as old Montaigne.'

He does not converse with us like a pedagogue with his pupil, whom he wishes to make as great a blockhead as himself, but like a philosopher and friend who has passed through life with thought and observation, and is willing to enable others to pass through it with pleasure and profit. A writer of this stamp, I confess, appears to me as much superior to a common book-worm, as a library of real books is superior to a book-case, painted and lettered on the outside with the names of celebrated works. As he was the first to attempt this new way of writing, so the same strong natural impulse which prompted the undertaking carried him to the end of the course. The same force and honesty of mind which urged him to throw off the shackles of custom and prejudice, would enable him to complete his triumph over them. Nearly all the thinking of the two last centuries,

of that kind which the French denominate *morale observatrice*, is to be found in Montaigne's Essays—there is the germ at least, and generally much more. He sowed the seed and cleaned away the rubbish, even where others have reaped the fruit, or cultivated and decorated the soil to a greater degree of nicety and perfection. There is no one to whom the old Latin adage is more applicable than to Montaigne: 'Pereant isti qui ante nos nostra dixerunt.' There has been no new impulse given to thought since his time."

From the letter of a friend, written some five or six years ago, we give a better character of Nicole, than we should attempt to depict from our own knowledge of his writings. "Nicole lived in the 17th century, belonged to the society of Jansenists at Paris, wrote various theological works, and was the tutor of Racine. I have hardly cut the leaves, but will translate a passage or two at random."

#### OF ELOQUENCE IN STYLE.

"There are two sorts of beauties in an eloquent style. The one consists in thoughts fair and weighty, but also extraordinary and striking; of which kind of beauty Lucan, Seneca and Tacitus are full. The other does not, on the contrary, consist in rare thoughts, but in a certain natural air, a facile simplicity, elegant and delicate; that presents common images, but lively and agreeable, and knows so well the art of following in its movements, that it never fails to express in each topic the parts of which it is susceptible, and to draw forth the passions and emotions the subject ought naturally to produce. This beauty belongs to Terence and Virgil; and we may see how much rarer it is than the other, since there are no authors who have been less nearly approached than these."

There is a remark in the preface, attributed to La Bruyère, that Nicole wanted the judgment, solidity, profundity and exactness of a true writer in morals, which is as much as to say of a horse, it appears to me, that he only wants wind, bottom and legs. A fragment on the Essays of Montaigne certainly discloses very little of the above qualities.

#### UPON THE ESSAYS OF MONTAIGNE.

"Montaigne appears to me a man, who after he had exercised his mind on all the affairs of the world to weigh their good and evil, had light enough to perceive their folly and vanity. He has very well exposed the

nothingness of grandeur and inutility of the sciences, but since he hardly knew of any other life than the present, has concluded that we have nothing more to do than to pass agreeably the little space that has been given us."

He shows discrimination, however, in his remarks on different kinds of intellect, (*l'esprit*):

#### LES DIFFERENTES CARACTERES DE L'ESPRIT.

"One can have a mind very just, very rational, very agreeable, and very weak at the same time."

"Extreme delicacy of mind is a species of weakness: it perceives eagerly, and yields too readily."

"There are some characters gloomy throughout. Some minds have surface without depth, others depth without surface, and there are those in whom both advantages are united. The first deceive the world and themselves; the world deceives itself with the second in not judging them for what they are, but they do not deceive themselves; only the last deceive neither others nor themselves."

"There are some who find out truths; others images for the truths, as comparisons; others who find out truths for images—three different kinds of intellect. The first arises from clearness and subtility of mind; the second from ardor of mind, which, conceiving vividly, finds by this same vivacity comparisons to express itself: 'To what shall I compare you, O daughter of Jerusalem? To what shall I say you are like? The overflowing of your iniquity is like the sea;' the third comes from neither ardor or subtility of mind, but from a certain agility, which applies the same images to different forms of truth, and finds readily such as suit it."

"It is a great evil to know the defects of one's mind, to feel them, and not to be able to correct them."

There are such gentle fools [*sots si doucement*] that they do not perceive it at all. Their words and their judgments always agree, and they feel no internal reproach to warn them of their defects."

"The true men of intellect are those who have but one kind of talent, but it is just, and conceives easily and promptly, what it expresses in an agreeable manner."

On the whole, we are inclined to think well of Nicole, and desire his better acquaintance. He is a devout writer, and frequently concludes his moral in divinity. He appears also to be an elegant and graceful writer."

## ADVENTURES ON THE FRONTIER OF TEXAS AND MEXICO.

## No. III.

BY CHARLES WINTERFIELD.

AFTER a hurried walk, I reached the Rancho. The first object that met my eye there convinced me that a new arrival had occurred during the night. A horse was standing at the picket blocks, rigged off in a style so peculiar as can only be conceived of on this frontier. There was something taken from all parties to compose this characteristic equipment. The bridle, lariat, quirt, and buffalo-robe had belonged to some Comanche warrior, who had bitten the dust before the unerring rifle of perhaps their present owner. The silver-mounted saddle had once been honored by the seat of some tinsel-bearing braggadocio of Santa Anna's regular officials. The blanket was American, probably from the packs of the Santa Fé traders. The half-gallon water-gourd looked like a "big-bellied bottle," with a second one, a little larger, hitched to its bottom by the neck, and all made fast by a transparent raw-hide, fitting like wax, drawn over them both. I thought it was a double glass-bottle, in reality, until examination showed me that it was a complete gourd. The raw-hide cover was marked with sundry curious hieroglyphics, which showed that it came from some Indian village toward the Rocky Mountains. The steed himself was a regular vicious-looking, pied, skew-ball of a mustang. "And the owner of this eccentric paraphernalia! he must be an 'out-and-outer!' a real 'wild boy!' and this horse is foamy and blown—he must have been running for it! Some more news from the Comanches, I expect! I'll call the Colonel out, and tell him about that fellow, Agatone, first, before I go in to see this man, for he may not be the right sort of character to talk before."

I saw the Colonel, at this moment, step, yawning and stretching, lazily to the door. He was just in the act of greeting me with his usual loud jeering welcome, when I made a quick gesture of caution, and beckoned him out. He caught his breath instantly, and stepped quietly behind the house. I followed him, and having communicated my news in a whisper, he almost turned black in

the face, and champed his teeth heavily, like a wild boar, at hearing that his mortal enemy had been so near him and escaped. He seized me, with the grip of a grizzly bear, by the arm, and hurried me into the cow-pen at a safer distance from the house; and between the low, smothered growl of curses to the name of Agatone, he questioned me eagerly as to every point in regard to the appearance of the men, the length of time since they started, the direction they took, &c., until, being satisfied in this respect, he grew a little more self-possessed, and thanked me for coming so soon to let him know. "For," said he, "I haven't a doubt the wolfish sneak has a camp somewhere close at hand, and all his pack with him. I must go over to the old madam's and start the Tonquowa on his trail; for, although she likes the Indian, he likes me better, and bates Agatone more. He will find out where they are camped, and bring me back the news; and then!" he fairly trembled as he clutched his knife. "But I am glad you called me out as you did; for that d—d mongrel creature in the house, there—I wouldn't have him to hear this for a horse!"

"Who is he, Colonel?"

"Why, the devil only knows, for nobody else claims him! He's a half-breed Mexican and white. His name is Davis. He's a thieving, cut-throat rascal, that lives between both parties, and on both. He has been all through Mexico, California—everywhere, indeed!—knows everybody, and has plundered everybody—Americans, Mexicans, Indians, and all; and every one hates him, and feels uneasy while he is about; for he is such a lying, treacherous villain, that there is no telling when you are safe where he is. He has been living, until the last month or two, down yonder, at the Rancho of that poor fool of a Texan lieutenant I told you about, that married a Mexican woman, and has been making a 'spike buck' of him; and he, poor sneak, hasn't had the manhood to drive him off. He went away of himself, a short time since, on some treacherous expedition, and I hoped he was gone for good, when



he came staving up here this morning, all in a sweat, with the news that there is a large camp of Comanches, about fifteen miles off, on the Medina. He says they chased him, but I doubt it. I am afraid there is some treachery in it. I don't like him and Agatone being in the neighborhood at the same time. I expect, for one, that we shall have to tie him up and shoot him! But I must go! You walk in as if you had just come, and be cautious how you talk before him."

So we parted—he setting off speedily for the Rancho, while I stepped carelessly into the house. There were two men sitting at the table with the Texan, who introduced me in a characteristic manner—merely saying, as he nodded from me to a tall, stout, sunburnt young American, who had rather a soft look out of his large, meaningless, flaring eyes, "Kentuck, this is the lieutenant! and this man," nodding at the other one, "is Davis! Sit down, or you'll have nothing left here to eat. The 'woman' will have to cook more for the colonel. Did you see him as you came along?"

"Yes, I saw him going toward the upper Ranchos."

"Did your pet Mexican die? haw, haw! You were nicely set to work, to go to all that trouble to save a filthy hog of a Mexican from dying. Why, I had much sooner have stamped his entrails out!"

"I have no doubt of it," said I, so soon as the laugh in which the other two had joined would permit me to be heard; "it would be impossible for you to understand the interest I took in this man."

"Yes, I have got no blarney in me to waste on a brute of a Mexican!"

"Nobody doubts your having too much of the brute in you, to care for others, whether brutes or men." I said this in rather an excited tone, for I was provoked at the taunting coarseness of my reception.

The Texan sprang to his feet, and clutching at his belt, said, "Look here, Kentuck, I don't allow people to talk to me in that sort of a way, sir!"

The lieutenant here interposed, in a good-humored manner, and soon restored a negative sort of peace, though the Texan was surly about it for some time.

This was a very foolish display of sensitiveness on my part, which a little farther knowledge of the spirit of frontier life would have saved me from. He did not mean anything more than a coarse joke; and my dignified flare-up was all

"pearls before swine" among such men, which I felt afterwards was a little verdant, and out of keeping with the tone I should have preserved under circumstances I had voluntarily thrown myself into. The truth is, I was fagged and out of spirits, from the loss of the whole night's rest, after the fatigues and suffering of the day before, and had little of the reckless buoyancy left, which was necessary to carry me without difficulty through such scenes. I dwell upon this little incident, because it was characteristic, and the reader will see that I afterwards had some trouble about it. When we were quieted again, and got to work upon our breakfast, I took a good look at the new comers.

The lieutenant, as they called him, impressed me as rather a greasy, easy, good-for-nothing sort of a somebody; while Davis, who was a thin, athletic person, with a pale, olive complexion, wore upon his sharp face that keen, restless, knavish look, to be in the presence of which, makes one feel fidgety. There was a quick, incessant play of light about his eyes that reminded me of a snake's tongue vibrating in strong sunshine. The fellow was dressed in the extreme of a mongrel dandyism, which seemed to be the result of an untiring effort to unite all the exaggerations of all the costumes he had ever seen, and was more of a hotch-potch than even the equipage of his horse. His coarse, black hair, plastered with lard into genuine "soap locks," a half-yard in length, was sticking about his shoulders, over which was thrown, with a most jaunty air, a full-circle cloak of coarse blue cloth, lined down the fronts with flaming scarlet velvet, which was so disposed as to show its every inch; his neckcloth was a coarse silk of the same gaudy color, and disposed in folds, the amplitude of which would have laid the Broadway dandies altogether in the shade; and, in point of jewelry, he could have snapped his fingers at them too, so far as number was concerned, at least: his smutty bosom was literally studded with pins and brooches of every quality and size, from copper and tin foil, up to pure gold. When, as he caught my eye upon him, mistaking its expression for admiration, he jumped to his feet, and jerked up his "sombbrero,"—banded two-thirds of the way to the top of its sugar-loafed crown with red and white beads—and setting it pertly awry upon his stringy locks, with

arms a-kimbo, under-lip compressed, and eyebrows puckered into an expression of savage pomposity, he strutted stiffly out to and fro in front of me—I could scarcely avoid bursting into a hearty fit of laughter, as he recalled Ford's quaint description of an "Old-Time Euphuist," or transcendental coxcomb:

"Resplendent—glistening  
Like Juno's witless Bird, he ruffled, when  
Beneath the opening portcullis of Morn  
He strutteth back and forth—the mimic  
Argus  
Of his wide tail outspread, that he might  
sun  
The tasseled glories of his shiney head  
Within its hundred eyes!"

Oh, it was rich! I screwed my face into an expression of intense admiration. This went to his heart, and stepping in front of me, with a lordly wave of his hand, that fairly glistened with rings of every metal and size, he addressed me with a loud nasal twang to his insolent voice: "Señor Kentuck! I have been a great traveler! Prodigious traveler! I have seen the world, Señor, like a brave man! and have tasted all there is in it a gallant man dare taste! Yes, Señor, from the 'Pulque' and the 'Noyau' of the dirty 'Rancho' of 'Dobeys' and logs, to the flashing wines in the marble mansion on the 'Hacienda' of a 'Don'—from the dirty calabash of a naked Indian, to a silver bowl in the palaces of Montezuma! I have drank till I could touch it with my finger! and this ain't all either; the Señoras have loved me in all these places! I have sucked the nectar from the yellow flowers in my way from 'Tierra Calliente,' where they melted to a look, and died away to my touch, up to 'Tierra Fries,' where their frozen bosoms could thaw to no other glance than mine! and, in the great Mexico itself, they crowded around me with such eagerness that they almost tore my splendid clothes to tatters, and I had to draw my stiletto so, to keep them off!" and suiting the action to the word, he whipped it out and flourished it with wonderful rapidity before our eyes. "Yes, Seño—" "Yes," interrupted Texas, jumping to his feet, "you beat thunder and alligator swallowing all hollow! You'll die off into a long jackass bray—pewter drops—cotton velvet—glass beads and all, if you don't stop. Blast me, you are worse than a Mexican!" This seemed the climax of contempt, according to his ideas of the force of expletives, and he paused

for breath, looking at the fellow with the most ludicrous expression of contempt.

Davis had paused at the interruption, his hand still holding the stiletto in the air. He had listened, at first, with an expression of blank astonishment, that anybody should dream of interrupting so musical a flow of eloquence; but when he heard his finery talked about in such disrespectful terms, his eyes fairly blazed again with malignant ferocity, and there was a very devil's venomous passion in his whole air, as he stood for an instant gazing at the Texan after he got through; then, quick as the spring of a wild-cat, threw himself, convulsively, at his unarmed breast—the stiletto must strike him full in the throat! I sprang towards them, but a stronger arm was upon him before me. Sooner than I could think, he was lying prostrate and stunned against the opposite side of the house, and the Colonel, with his knee upon his breast, was wrenching his weapon from his hand, when the lieutenant and myself together, succeeded in arresting his arm.

"Damn it, let go boys; we will have to kill him yet, anyhow!"

The Texan here interposed, and we dragged the Colonel off backwards.

"If there is any killing, I'll do it myself!" said the Texan, as he sprang with his heavy boot-heels upon the chest of the prostrate wretch. Leaving the Colonel to recover his feet we ran to him and jerked him off, telling him the man was dead already. We succeeded after great difficulty in quieting them, as they saw that the man yet lay perfectly still. I threw some water in his face, and in a little while he began to stir, and was shortly on his feet again, for he was only stunned: he staggered out of the door, and vomited a quantity of blood that had been started by the Texan's heels, while he stood laughing at him and enjoying the "fun," as he called it. The man came sullenly into the house after a while, half-doubled up, and seeming effectually cowed—his head muffled in a bandage—his finery all bedraggled—his vain-glory all gone—looking as I have seen a dung-hill cock, which had been caught stealing dough in the kitchen, and been thoroughly ducked in the slop-tub by the angry old black cook, and which, shaking the bran and filth from its eyes and stringy feathers, would slink, with a doleful air, to hide its diminished head in a corner from the gaze of its dames, till its glory was replenished. Could some of those "Yel-

low Flowers," the nectar from whose lips he had sucked, have seen him then!—the gay ideal of their voluptuous dreams, skulking in a corner, the "shine" rubbed off, and gore and dirt smeared in its place—his baubles trampled, and those sleek, flowing locks, clotted and confused beneath the ties of that most flaming of cravats—would he not have realized to them,

"Cupid hood-winked with a scarf,  
Bearing a Tartar's painted bow of lathe,  
Scaring the ladies like a crow-keeper?"

Gentle "Yellow Flowers!" your fortunate stars have spared you this rude shock, and peacefully their mellow beams may rain on your warm brows the dew of visions; and in them you may still undoubting see that glowing form, with all the gallant show unmarred, that left its impress on your hearts! Blissful ignorance! and perhaps all you will hear of this will be the story of a triumph, when, on some sad-eyed Eve, you sit beneath the moss-hung oak, sighing with the breeze for lack of warmer sighs,

"To take the amorous echo up,"

you shall hear an answer to your hearts in his exulting shout as he comes careering across the plains upon his sweltering steed, to dash the gory trophies of his vengeance at your feet! Even now he seems to be forging the silent thunder of revenge! I can perceive that the malignant fiend has not been exorcised by any means, with all the truculent efforts of these two rugged "clerks of the Greenwood," who have taken the matter in hand; for as he sits crouched in the corner, I can see the red light of hate direly gleaming from his eyes, like two burning coals from a dark hearth, as he watches the movements of his late assaulters about the room. I shall look for terrible results ere the ghost of his honor be appeased! And now fair daughters of the North, how do you fancy this "Mercutio" of the sunny South? At the bare recital of this Protean versatility of attraction, will you not own the "soft impeachment!" Come, no coy airs! confess it frankly—at even the rough sketch of a hero so exquisitely "just the thing"—that the delicious fluttering tumult at your hearts has waked "the silent war of lilies and of roses" in a Parthian fight, careering up from your warm bosoms, over your "silver cheeks," and breaking in red spray beneath the azure veiling of your temples? Acknowledge that you

are desperately taken, not for my sake, but for the sake of the dandies at home; for how can they survive it, should I, in pursuance of my duty as the nearest representative of this gallant Mexican "Euphuist," be compelled to assign you "a local habitation" in the "Tierra Fries," that arctic realm of "frozen bosoms?" You are difficult enough of assault now, and home dandies have not the fiery glance of our "Euphuist" to thaw icebergs! and furthermore, upon this same dreadful penalty, dare not institute unfair comparisons between him and our "domestic manufacture." For though my client

"cannot sing,

Nor heel the high lavolt, nor sweeten talk,  
Nor play at subtle games—fair virtues all  
To which the *Grecians* are most prompt  
and pregnant,"

i. e. "Corinthians" of Broadway!—Though he may not be possessed of "the still and dumb discursive devil" that lurks in these, yet his is a matchless fling at a "Fandango," and he can swing the "dark-eyed daughters of the Suñ," to the merry click of the castanet, with most voluptuous grace, through many a tangled, quaint and winding measure, which they, with all the aid of "dancing shoes with nimble soles," would have found it impossible to foot it through. We must leave him in eclipse for a little while, to go on with our story.

And now came another scene of ludicrous bluster and confusion. A Mexican scout had returned and reported a large body of Indians camped on the Medina; thus confirming the report brought in by Davis. We must go and rout them, but how to get there was the puzzle! The Texan had recovered his horse, but the Colonel, myself and the Lieutenant, had none. We could not get them of the Mexicans, and should we have to foot it the fifteen miles? While we were debating this perplexing question—every man talking for himself and all together—the remnant of yesterday's party galloped up. They had concluded by this time that it was best to have us along—not that they could not exterminate the enemy to-day as they had yesterday by their unassisted valor! No, forbid it shades of Montezumas, Incas and Castilians all! By their united glories they needed not our arms! But they pitied us, seeing that we would go if we had to walk; and felt a generous sympathy kindle in their warrior breasts at witnessing our ardor; so

that they had brought led-horses for us. And there was Antone again—the brazen knave bragging with as obstreperous impudence as ever; though he kept a little back and a sharp eye about him this time, for the Texan—but this only made it necessary for him to talk the louder. As his character of privilege as boaster and spokesman-general seemed to be conceded, even the bloody veterans of yesterday sat quietly and listened while he made speeches for them; expressing in super-grandiloquence, the sense they entertained of their own magnanimous generosity, in thus furnishing us gratuitously with the means of sharing with them on equal terms the flowering laurels they were about to gain.

After this peroration, they opened their ranks, and led out for our admiration the steeds they had brought us. Oh Mars! hadst thou belonged to the mythology of Mexico, they would have made thee all legs! The horses they rode themselves were nimble and active animals, while those they offered us were the veriest starved, worn, ulcerated, miserable anatomies, that can be conceived—looking as though their legs could hardly totter under the raw and wretched sack of bones which made up their shriveled bodies. It appeared that they were three pack-horses the Comanches had left behind them as useless in their passage through our “bottom.” I turned off in angry despair, while the Colonel and Lieutenant selected the two best, determined to make the most of it. Just at this moment, a Mexican woman came running to us with the information that she had noticed a number of wolves prowling about a low thicket a few hundred yards off. The Comanches had passed through it as they were approaching to attack us the morning before, and she supposed they had left a dead body there, for the wolves looked so bold and eager—as they always do where a human body is concerned—that she had been afraid to go herself to see what it was; but, that they were tearing and fighting over something on the ground, she could distinguish very plainly. We determined to leave the dispute about the horses, and see what this meant. The Mexicans charged with headlong rashness and shouts, down upon the thicket, and five or six wolves actually scurried out, with tails between their legs, looking a good deal frightened. They were so much exhilarated by this success, that they kept on after the wolves

to let off their surplus valor in imagining them Indians flying before their arms; while we went into the thicket, where a most revolting sight met our view. A spot, several yards in circumference, was trampled into a black, bloody mire, strewn with white hair, torn clothes, and the fragments of what we saw had been the body of an American boy. There lay the head torn by the neck out from the shoulders, one-half the face eaten away, and the marks of ravenous teeth scratched in white lines across the skull; here, the bare ribs; there, the legs torn from their sockets and stripped of flesh, except one on which a stocking still remained; and when it was pulled off there was the pale foot with its livid nails, entire—and the flaxen hair clotted into locks, as the bloody brutes had shaken its tangles from their fangs, clung about the bones and to the shrubs around, whose broken twigs and red stains bore witness to the wild struggle that had so dismembered it. I was absolutely sickened by the horrid sight, and even the rude men around me were subdued and touched; even the Colonel's voice sunk into low tones of something like sadness, as he ordered a Mexican to bring a mattock, and we went reverently to work according to his directions, to gather up the scattered fragments and heap them together for the grave. By turns we took the mattock and silently dug away at the rude hole. That he was an American boy was all we knew, and this was enough for our sympathies. That he had been killed by the Comanches we were convinced from parts of his clothing, in which we could discover plainly the cut of a lance head, and this was enough to occupy us with stern thoughts of vengeance. The hasty grave was finished, and the bones laid decently in such order as we could into it, and the dirt, wet with his own blood, thrown in upon them, Dust to dust, poor boy! yours was a hideous fate indeed! We then collected logs from every direction, and heaped them in a great pile upon the grave, to keep the wolves from digging the bones up with their paws, and turned to go back—all parties more thoroughly sobered than I should have thought it possible for such men to be.

A Mexican from the madam's Rancho, and on foot, here joined us; he told us that the Comanches had done a great deal of mischief before they reached us. In addition to a number of other murders,



they had come suddenly upon a man by the name of Black, who lived some twenty miles off, when he was ploughing in the field. He was holding the plough-handles, while his son, about thirteen years of age, drove the oxen. The Indians were nearly on him before he saw them. He seized his little son by the hand and ran for life towards the house, where his rifle was. The Indians were so close upon him, that in the hurry the little boy fell and broke the hold of his father's hand; he looked back, and saw that if he stopped an instant to regain him, their lances would be into him—they were already standing in their stirrups to launch them—so he kept on, hoping to get his rifle in time to rescue him. He sprang into his house, and one of them was in such eager pursuit that, before he could check his headway, his horse run its head into the door, and had nearly pitched its rider head-foremost into it. Before he could recover himself, Black had dashed his brains out with his rifle. He then sprang into the saddle of the Indian, maddened with a father's agony as he saw the rest of the party making off at full speed with his child—for only the single one had followed him after he dropped his boy. One of them, lifting the boy on the point of his lance by the clothes, had set him behind another, and then they had wheeled and cleared out, seeing, probably, what would be the result of the affair with Black. The poor man saw they had greatly the start of him, but he gave chase alone with the desperation of frantic hope; and frantic it proved to be, for they outstripped him far enough, and he soon lost sight of them. He then turned, and made for Bexar, to get Hay's Rangers, in the hope that he should be able to intercept them before they reached the hills.

"Ah!" said the Colonel, "this is the son of poor Black we have just buried! A most unfortunate man he has been! This is the second son he has had killed within the year, and is the last of his family. He's a brave man, but has been foolish in always living where nobody else would dare to live; he was living in just such a place when his other boy was killed. Black had a very fine horse, and the boy was riding it after cattle, when one of Agatone's men, who had been lurking about to steal it for several days, waylaid the boy, shot him, and took the horse. When he was going to live in this place, I tried to persuade him not,

but to come and live nearer to me; but he wouldn't do it! He's a strange, wild sort of a man. They say his wife, that he loved very much, was killed by the Mexicans, and that Agatone had something to do with it,—and the poor fellow has been a little cracked ever since! but I don't pity a man much who would let the death of a woman crack his brain!"

Paugh! I felt as if I could ram the butt of my gun into his mouth for the utterance of so coarse a thought; but I remembered the scene at breakfast with the Texan, and held my peace. Such a comment was sacrilegious, upon a story which, unconsciously to him, was a most touching one. I felt a deep and sadder interest for the man at once. Such a grief was that of a strong nature—haunting him out from all social ties, to live in the constant presence of dangers which appalled other men, that he might dedicate his solitary life to past memories and vengeance. Truly was it a piteous fate to see thus cut off, one after another, the only living bonds between that love and the deep oblivion of death! This man is an instance, among many others, of the strange, passionate eccentrics to be met with on this frontier.

"But, Colonel," said I, "if this be the son of Black, why should the Indians have brought him all this distance to kill him, if they intended to do it?"

"Oh! they didn't intend to do it when they brought him off: they don't often kill white children when they can get them away. They adopt the boys, and make warriors of them, and value them very highly, for a number of their most distinguished war chiefs were stolen in this way; but for the girls they care little: they take them if it is convenient, and if it isn't, they seldom kill them. They don't make wives of them, but merely slaves. They have so great contempt for the Mexicans though, that they always kill them—man, woman and child. They never permit a white boy to be rescued; and if there is any probability of this, they invariably kill him. I suppose the way this thing happened was, that the Indian with the boy behind him, was in the rear, and the boy hearing the guns, and thinking that friends were near, jumped off and attempted to run for it, and the Indian struck his lance into him and left him. It is a settled point with them always to do this; for they consider that if the boy

escapes them, he will become a white warrior; but if they kill him, it is one future enemy out of the way!"

I had afterwards an opportunity of seeing this savage trait more clearly illustrated! The whole party were now assembled at the blocks of the picketing, armed and mounting, "in hot haste," for the Indian fight; and when everybody else was under way, I found myself by the side of the most disconsolate, woe-begone looking beast that ever it was my fortune to put eyes upon. Rosinante was an over-fed, high-conditioned steed compared with him. A starved buzzard would have scorned to pick his lean ribs, and a hungry wolf's tooth could have hardly scraped anything but hair, hide and tendon from his hams; and there was a great disgusting sore on his back. But what was I to do? My feet were still too tender and full of thorns to think of walking. My pride would not permit me to stay behind, and the only resource left was to make the best of this wretched creature. I felt my conscience twinge me hard as the poor animal groaned when I mounted the saddle. The Lieutenant came back and gave me a "quirt;" assuring me that there was a wonderful outcome in all these horses, and that I had only to ply it well to make my steed do all I wished—that I could easily keep up until we got to the Comanche camp, and then I could win a horse for myself. This all chimed so well with my own wishes, that I commenced plying the heavy whip upon the sounding ribs of my steed; and as his unexpectedly brisk movement brought me up with the company very soon, I began to conceive that his miserable looks were all a deception, and to feel entirely merciless, as I conceived he had been "playing possum" with me in assuming them. The whole of this I was very anxious to believe, and that the saddle, though it rested upon that huge sore on his back, did not hurt him in reality, but that somehow or other he had got used to it. Pardon me, gentle reader, for this cruel sophistry! But you must consider that, in this frontier life, all depends upon your being positively in it, when a fight occurs, for nobody takes the trouble to consider the impossibility of your getting there! If you are not there, your reputation suffers. I felt all this, though I felt, too, every lash I gave the poor horse cut into my conscience! But after going a few miles, neither lashing nor

anything else would avail, for out of a walk he could not nor would not go. The Colonel and all parties, who had been rather laughing at my ridiculous position before, now seriously advised that I should go back, as it was plain the horse could not hold out. But I was excited, and determined to go on and see this affair out at any rate; so I turned my poor steed loose when I found he could not answer to the heaviest strokes I gave him, and determined to keep up on foot. Several of them, seeing that go I would, proposed that I should "ride and tie" with them in turn. I was now comparatively comfortable, and had time to survey the party more critically. Antone, bearing aloft a Comanche lance, rode valorously at the head of the party, and, much to my astonishment, next to him came Davis our "Euphuist;" who had rejuvenated his glories, and looked as splendid and gay as ever: and, like his peer Antone, carried simply a lance for his weapon—scorning, no doubt, in his chivalry, to take advantage of superior knowledge in fighting the poor barbarians with his own weapons. He and Antone seemed to be engaged in a bragging match, from the loud ring of their voices. Next to them followed the Mexicans, eager for the fray. Thinking it about time we should be approaching the Medina, I took advantage of this gallant confidence, to secure my turn on horseback, of one of the heroes, who had promised me that I should ride his horse in turn. But as we approached a portion of the road, skirted on each side by thick and scrubby undergrowth, which prevented our seeing far, and the timber before us began to thicken and look tall like that bordering upon a stream, I began to notice that the nimble horses of the Mexicans grew suddenly amazingly sluggish, and I perceived myself to be passing them one after another, although my horse was walking slowly; and when at last there was a cry ahead of us, "There they are!" I came near to being run over and trampled by the sagacious and politic Antone hurrying back to bring up the lagging rear. He was pouring out eloquent and voluble exhortations to them to remember the glories of their ancestry, and deport themselves worthily of their high descent; while Davis, on the other side, was gesticulating furiously, and talking louder than Antone, though a little ahead of even him, in his anxiety to bring up the very

last of the dastardly loiterers; and when they got clear to the rear, they took up their positions there—lances in rest—seemingly determined that no coward should fly, but back upon their points. My Mexican became now very clamorous for his horse: this I took occasion to quietly disregard.

Seeing things so well secured in the rear, and finding myself, by this sudden change of the order of march, pushed on to the front with my three friends, I looked out with some curiosity, not to say anxiety, upon our perspective. We were about two hundred yards from the narrow skirt of timber on the creek, and between the trunks of the trees I could see all the indications of a large encampment, in dark, half-naked men hurrying their horses together from the prairie, while others were hastily mounting. The Colonel gave the command to halt, and ordered us to see our guns for an instant, and then raising himself in his stirrup, shouted, "Come, boys, let's into 'em!"

We were about fifty paces from the timber, which was about the same distance in width, and we had to charge through it, before we were upon the enemy, who were gathered in a confused mass a little distance beyond it. On we went, helter-skelter; and when we came through, all glowing with the ardor of battle, what was our astonishment to see the Colonel, who led us, draw up his steed suddenly, and shout to a warrior, who came galloping to meet him, with a grin of delight on his sooty face, "Why, how are you, Castro? We had like to have been into you, old fellow!—we thought you were all Comanches!"

And who was Castro? And what nation were they of—this swarthy troop—with whom the Colonel had so unexpectedly claimed acquaintance? It was, indeed, a wild-looking crew. The dark, gaunt, fierce-eyed fellows, came crowding eagerly around us; some of them not fully mounted, clinging on by one leg and hand, as they spurred their horses into the rush; others, not mounted at all, dragged their unwilling steeds by the lariat, bending forward low, in the hurry; while those fairly up, shook their bows and lances, tossing their arms in strange gyrations, and galloped to us from every direction, clamoring their salutations to the Colonel with all their lungs. It was a savage welcome, with a vengeance! noisy, extravagant, grotesque! The appearance of their camp was quite in

keeping. For thirty or forty paces on all sides, the ground was strewn with heaps of buffalo-ropes, coils of raw-hide lassoes, bridles, bows, quivers with their arrows half emptied out, shields, skins filled with parched wheat, moccasins, bead pouches, fringed leggins, quirts, horse-tails, and every other conceivable sort of quaint, barbarous fixture. The warriors themselves were not the least curious part of the scene—their persons naked to the clout and leggings, with bright ornaments of tin and silver, in bands, around the wrists and neck—crescents, stars and curious devices, pendant from their ears and from their platted hair, making the "darkness visible" of their sooty skins, more emphatic by the contrast. Most of them rode what are called "paint horses;" that is, the mustang, spotted with all the deeper colors on a milk-white ground. And as I looked around upon this hideous, yelling mass, swaying to and fro about us—their gay feathers, long lances, white shields, dark bodies, and gleaming eyes—tossed and mingled in the strangest confusion by the plunging of their mottled steeds, it realized perfectly to me one of those vague dreams of wild and savage romance, which had been haunting my brain since childhood:

"And thousand fantasies  
Begin to throng my memory  
Of calling shapes and beckoning shadows  
dire."

It was soon demonstrated that we had something more than "beckoning shadows" to deal with in this case; for they almost trampled us under foot—man and horse—in the first place, and then they nearly dragged us from our seats in their unreckoning eagerness to have us get down and partake of their hospitalities. I had by this time become so much hardened to miracles, that I quietly submitted to everything which turned up; though I was in the most perfect ignorance all the while what it meant. Not so with the Texan. He had his gun almost to his face when the sudden recognition took place; and though he did not quite pull the trigger, he held it still in the position for firing—turning his head quickly from side to side, with a chafed, bewildered look, as the Indians dashed up on every quarter. He could not stand the puzzle any longer, and, with a furious oath, shouted to the Colonel:

"Tell me who these black devils are, or I'll let into 'em!"

"Lipans, man! They are the Lipans—our friends! Castro, and all of 'em, are old cronies of mine! Keep your thunder for another time! Look at them Mexicans, will you?"

We turned our heads. There they were—the blood-stained veterans! about a hundred yards off—just rallied from the flight they had commenced—Antone and Davis now at the head again! Here they come! They see there is to be no fight, and their valorous captains are leading them down with fierce shouts, clattering their weapons as though they intended chopping us to mince meat. Nobody stirred to stop their headlong career, as they expected; so they were under the disagreeable necessity of halting very suddenly themselves, some ten paces off, to ask the meaning of it all. This was done in a very savage, threatening manner, by their two ferocious leaders; both blustering and growling at once, determined to make us all feel, by their surly obtuseness in understanding any explanation of the thing, how much we had escaped in being able to ward off their terrible exterminating charge. Castro and his warriors looked at them for a moment in contemptuous silence. The chief then turned to us with a grin.

"Booh! booh!" said he; "who them scare? The rats in the sand?"

We all burst into a hearty laugh at this; while the Mexicans, seeing their sputter was "no go," came crowding in among us with obstreperous expressions of delight. Even the Achillean anger of Antone and Davis was appeased at last; changing by slow and dignified degrees, from a scowl to a grin. They were soon launched—each for himself—into a formal oration: in which they congratulated Castro upon the lucky escape he had made in giving the explanation just in time to save himself and party from being overwhelmed by the hot-headed impetuosity of their veterans. They shook before his eyes the lances which had been taken from the rash and unlucky Comanches, and showed how they had been bent like reeds before the tempest-track of the wrath they had provoked. They were then winding up by impressing upon him, in reiterations, the high sense of gratitude he ought to entertain and express towards the "Blessed Virgin," for her mercy in permitting him to come under the shadow of their formidable power as allies; not leaving him and his nation exposed, as the wretched and out-

cast Comanches were, to the tornadoes of Mexican ire! This rather capped the climax of any display I had yet witnessed of the surprising powers of Master Antone. Just picture to yourself the tall, erect and martial figure of the Indian warrior; and then, a few paces in front of him, the shriveled figure of Antone, standing in his stirrups, leaning forward, in his eagerness, over the horse's neck; his hat off, his lean, yellow face upturned, his chin and long sharp nose pointing to the zenith, his little black eyes glowing, his wide mouth clattering like a mill-clapper, every sentence

"A bombast circumstance, Horribly stuffed with epithets of war,"

enforced by as rapid gesticulation; changing the lance from one hand to the other; now making it sing again, as he whirled it in the air; now striking it fiercely against the saddle. He even forgot his old enemy, the Texan, so intensely was he absorbed in bearing down poor Castro to the very earth by the torrent of his eloquence; when, suddenly, a lance from that same merciless hand, was so sharply thrust into his posteriors, that—biting a word in two—the pain caused him to make a convulsive spring which carried him over his horse's head, and landed him most ignominiously on his nose, in the burrow of a sand rat, amidst a simultaneous roar of laughter, in which even the stoical warriors joined. Davis retreated very suddenly; and as the choph-fallen knave gathered himself, sputtering the blood and sand from his mouth, and slunk off to the water to repair damages, he was followed by reiterated peals. I thought Texas would go into actual convulsions: he slid from his horse and rolled upon the grass in a perfect spasm of merriment; and the Colonel, I think, approached nearer to the verge of a genuine laugh than I ever saw him before or afterward. The Indians enjoyed it highly, though laughing is not a national amusement with them; but they entered into the whole spirit of the thing; for they were brave, shrewd men, and felt, perhaps, a more unmitigated contempt for the Mexicans than even we did.

The hubbub of merriment subsided, we yielded to the solicitations of Castro and dismounted. Buffalo-rugs were spread on the ground, and we were very promptly seated, in comfort and feasting with these men we had been so near a fatal



collision with a few moments before. They had built no fires, for fear the smoke might betray them to the Comanches, of whose presence in the country they were aware. Our repast was light, simple, and nutritious; such as the southern Indians always carry with them on their expeditions. It consisted merely of dried beef and venison pounded up fine, that it might occupy as little space as possible in their packs, and Mexican wheat, parched and then coarsely ground between two stones. This last we mixed with water from the river and drank. This food is highly nutritious, and easily carried; and the Indians will endure immense hardships, for a long time, on it alone. The necessities of their wild helter-skelter lives have taught *them* to settle down upon the two articles, of all others, used by man for food—which analytical chemistry has taught *us* to contain the greatest amount of alimentary matter compressible into the smallest space. It is a curious fact that men will endure a greater amount of fatigue, and for a greater length of time, on this than any other known diet. The hunters, trappers and Indians all agree in asserting this, and my experience goes to confirm it. The meal, which had been dispatched in rather formal silence, being finished, Castro arose, as the politicians say, to define his position. He was a fine-looking fellow, straight as the stem of a palm; his limbs exquisitely developed. There was a light and elegant finish about his whole frame, that I scarcely ever saw approached—an expression of bounding elasticity that cannot be conveyed. His face was after "the high old Roman fashion," his forehead broader and better developed than I ever noticed an Indian's before; and the circlet of eagle's feathers set back upon it, the flash of his large black eye, and the play of his wide, thin nostril, gave to his whole air a fierce alertness, and wild magnanimity, which would have consummated the poet's ideal of nature's tameless chivalry—a nursling of the sun and storms—a knight of the sea-like waving plains—quick in the chase and battle as the gray-hawk's arrowy stoop—merciless, strong, and terrible in beauty as the glossy panther. He was much distinguished too, above his tribe, by the richness of his ornaments, which were of pure silver, banded, and hung upon his dusky skin in great profuseness.

Tufts of red-stained horse-hair, and scarlet feathers, set off his lance, and bow, and belts,—one of which last crossed his swelling chest and sustained the full and gaily decorated quiver behind: another around his waist, bore the long hunting-knife, and held in its place the most unpoetical, and ineuphonic, "breec-clout;" and to this was attached, by thongs, the leggins, which came up to the knees, the white buckskin of which they were made, marked with angular figures in red and black paint, and cut into a wide fringe behind; again, to those were attached the moccasins, made of the same material, neatly fringed, and worked with beads, by the fingers of some dusky maiden. At his feet lay his bow, and the oval shield made of skin from the necks of buffalo bulls, tanned to a shining, white surface, bearing, like the shields of all other knights, his coat of arms, painted in strange hieroglyphics, that told the story of his feats. His warriors, to the number of sixty, accoutred in something like the same style, though much less handsomely, were grouped around us in grave silence, looking up to his face with respectful attention, when, with a graceful though stately nod to the Colonel, he commenced:

"Brodder! the big war-chief," nodding to us, "and white brodders! Lipans are strong braves! they no forget! So much times," holding up the fingers of both hands, "the grass has been pale, Castro and his braves know the big war-chief. He very much brave; his heart much full of blood—his hand very red. He strikes like the Great-Spirit fire! the Comanch fall, the Mexican fall—many papooses weep. He learn Castro much to fight. Castro he now big war-chief, too. The Comanch take your horse! Castro will take his scalp! The big war-chief must have his horse; Castro will bring it! The trail is on the grass. Lipans see sharp. They are ravens. Many hours they are gone. Lipans are swift. They are long-eared rabbits\*—run longer than wolves! Comanch has much good horse. Lipans' horse run like wild goose fly. Go sleep! Castro will bring you scalps—all you horse! So much," holding up four fingers, "times the sun go, the big war-chief and white brodders shall see Castro! Comanch big cowards! Lipans hate cowards! Damn! Castro will whip Comanch! Lipans can whip squaws!"

The warriors sprang to their feet at the

† A large species of rabbit, with very long ears, that far outstrips any other animal on the plains for speed.

conclusion of this oration, and danced, and yelled, and clattered their lances against their shields for a few moments, and then suddenly scattering, every man to his horse, in an incredibly short time they were all mounted, everything in its place, and ready to be off. The Colonel shook hands with the young chief, saying, "Castro is brave—he has fought by my side! The Lipans are like white warriors! Good-bye! Go it, my fine fellow! you are game, and no mistake!" We gave them three cheers, which they answered with the war-whoop, and scurried off at full speed over the plain—and a wild, light-heeled, fierce-hearted crew were they! Antone and Davis galloped along with them for a half-mile, making more fuss and fierce demonstrations than any warrior of them all; but after they had wounded the inoffensive air by a sufficient number of ferocious thrusts at some phantom foe, to convince the Indians how severely they would deal with one of flesh, they wheeled out of the crowd, and came galloping back to us with all the conscious bearing of heroes.

We now set out for home—the Texan grumbling that he had been disappointed in a fight!—the Mexicans swaggering about what they *would* have done—that is, Antone and Davis being mouthpieces of the common sentiment!—while the Colonel and myself jogged along very cosily together—he in his usual gossiping mood, and I a good listener! "The Lipans," said he, "were once a formidable nation. They have held a desperate feud with the Comanches since the flood, for all I know; and after we came here to take possession of the country, we found them one of the most unmanageable tribes in it. We had some furious fights with them. Between the Texas rifles and the lances of the Comanches, they had been thinned out amazingly, though they were still so troublesome that the boys got together at last to exterminate them—tear them up, root and branch!—and though at the time there was a sort of truce between us, the boys crept on their camp, near Labaca Bay, one morning about daybreak, and firing upon it, then went into a regular wholesale slaughter of men, women and children. They fought like devils as soon as they got their eyes open—for they were sleeping like logs when the Texans fired on them. But it all wouldn't do, and they were killed—the whole of them, but these sixty warriors and a few women who made their escape. The Coman-

ches got wind of it, and hoping to wreak on this weakened remnant the vengeance they had been waiting for, upon the tribe, they pressed them so hard that the wretched creatures came to us for protection. They swore to be our fast friends forever, if we would save them from extermination! We drove off the Comanches, and since that time the Lipans have been faithful and very useful to us. It was like a cur licking the hand that beat him; but they knew there was a greater chance of mercy for them, with us, than with their old enemies. Indians hate where their fathers hated hotter than devils. Castro was a youngster then—but he's got the heart of a white man in him. He saw me in a fight with the Comanches once, and came to me and wanted me to tell him the charm that would make him fight like me. He wouldn't believe it when I told him there was no conjuration about it, and wouldn't leave me for six months after, night or day. Every fight we had, he kept by my side, watching every movement I made, thinking I had concealed the spell from him, and determined to find it out. He would go wherever I did, it mattered not what the danger was; and I have frequently been amused to see how closely he would watch me. In the hottest of a fight—instead of attending to his own defence—his eyes would be curiously observing the slightest thing I did, and imitating it then, himself. When he met with Captain Hays of Bexar—who is the most daring and successful ranger we ever had on the frontier—I thought the fellow would go crazy with delight. He almost worships him! and for a year or two, he never left him; and the boys used to say, it was nip and tuck between Jack—as they call Hays—and Castro, who would do the most foolhardy things. His tribe soon elected him their war-chief. And though he never found out the secret of the "spell," as he thought it was, yet in the search for it he became one of the most bold and headlong warriors I have ever known. The boys tell a good story about him! Every rash thing Hays did—and he did a plenty of 'em—Castro would forthwith do something just as rash, and a little more so if possible. He was along with Hays and his party of ten Rangers, on an expedition to the Rio Grande once, and they very unexpectedly came in view of a troop of eighty Mexican cavalry. There seemed to be no chance for it but to fight, great as the difference in number was,

or be taken; and such an idea never, for once, entered into Hays' calculations. The Mexican Colonel rode out some distance in advance of his men, and very insolently ordered Hays to surrender. The parties were about three hundred yards apart. Hays coolly turned to his men, and said, "Set still boys, I'll fix that chap!" They were so accustomed to his odd ways that they obeyed, and let him ride on alone, to meet the Mexican officer. The officer thought he was coming for a parley, and approached him off his guard. It happened that Hays was riding a wild young horse that was not accustomed to firing. He forgot this, though, and, supposing it was his old horse, when he got in about eighty paces of the officer, jerked his rifle suddenly to his face, and tumbled him off. The young horse, desperately frightened, ran off with him, and carried him like a streak clear through the Mexican line. They were so much astonished at the rapidity of the thing, and the fall of their leader, that they did not attempt to interrupt him, and he passed through unhurt. Castro, when he saw this, instantly put spurs to his horse—for he thought it was a bravado feat, and was determined not to be laid in the shade. So all alone he came charging down upon the Mexicans too; but they had by this time somewhat recovered from their stupor, and gave him a little hotter reception than Hays had met—though they were most thoroughly confounded by this new mode of fighting. They closed around Castro, who fought like a wild-cat, and soon unhorsed him, with a half dozen wounds; and, but that the Rangers, just in time, dashed in to his rescue, he would have been cut to pieces.

The Mexicans never got over the confusion these two extraordinary sallies produced, and were badly whipped. After they got through tying the prisoners, Hays stumbled upon Castro, lying bruised, bleeding, and almost insensible, under the feet of their horses. He stooped by him, thinking he was mortally wounded, and took his hand affectionately. Castro opened his eyes, and seeing who it was, said, smilingly, as he closed them again, "Ah, Captain Hays! you be too much brave for poor Castro! he no go through the hell like you!"

It was a long time before the brave and simple-hearted fellow got over it, and when he did get well, he merely answered the joke that was current about the affair, saying, "The white chief no

more shall beat Castro for the laugh." I was much delighted with the story of this gallant knight of the "Order" of Nature.

When we reached home, we found a ragged, tow-headed boy, who looked as if he might have been white once, and who had been sent as *page d'amour*—I suppose—by the old Madame Cavillo, to request the honor of the presence of her dear friend the Colonel, and his friends, at her grand Fandango, to be given that night. The Colonel was in great glee in anticipation of this frolic. Very much to my astonishment, he endeavored to dissuade me from going.

"My boy," said he, "you are too imprudent! You will get into a row over there, if you go! It's going to be a ticklish evening. The old woman wants a quarrel with me any how, and if there are too many Americans there, she will make that an excuse."

"I like that, coming from you," I said, laughing. "It sounds rather funny to hear you preaching prudence, after what you did yesterday."

"Well! well!" said he, with a grin; "but I am in earnest! I have especial reasons for thinking that it will be the safest for all parties that you and Texas shouldn't go there to-night. I wish you would stay; your feet are too sore to dance, any how."

This was too true; I was too much used up to enjoy the thing, and felt half disposed not to go, at any rate. But Texas swore bluntly that he would; though the Colonel continued to remonstrate and persuade, he was not to be moved. I thought there was something odd about this excessive anxiety to have us stay behind; but I was too much worried to think about it specially, and threw myself upon my buffalo robe for a nap. I was waked by the glare of a light in my face. On looking up, I saw it was caused by the boy who brought the message from old madam. This boy was a singular animal. The Colonel had told me concerning him—that his parents, who had been frontier people, were both killed while he was quite small, by the Comanches, and he taken prisoner; that after keeping him among them for a year or so, the Indians had brought him back with them on an expedition against this settlement; that the boy, in a very daring style, had jumped down from behind the warrior who had charge of him in the midst of a fight, and made his escape by running to the Rancho of Madam Cavillo, although

riddled by half a dozen arrows in the effort; that since, he had lived a sort of jackall-life, from house to house, owned by no one, kicked and cuffed on all sides, mocking and stealing from everybody—the Mexicans hating him because he was white, and the whites—who had ever seen him—taking no interest in him, because of his wild, curious habits and a character for faithlessness. He lived, in a word, “a vagabond upon the face of the earth.”

The night had set in very dark, and he had built a fire to roast some meat by, which he had pilfered from the Colonel's pork-barrel. It was a sketch for the pencil of a Cruikshank—that boy with his “unkempt hair—his looped and windowed raggedness,” crouching over the flickering blaze, one hand before his face, to protect it from the heat, the other holding a great slice of fat pork to toast on the end of a sharp stick; and in the entire abstraction of his task—his thick and flabby lips fallen upon his chin, and dripping with saliva—while the dense and gloomy shadows rose and fell, and leaped and danced about him, from the uncertain flame. I watched him for a few minutes, and then called him—“John!” He sprang to his feet with a sneaking, guilty look, and endeavored to conceal his theft, until he found it was of no use; then putting an impudent face upon the matter, he broke out into a loud and shrill laugh.

“Ha! ha! old Red-head wanted yer to stay to-night to keep his things from being stolen by his women—did he?”

“Snake baked de hoe-cake—  
Set de frog to watch it—  
Frog went to sleep—  
Lizard come and stole it.”

“Ha! ha! ha! went to sleep, Mr. Frog, did you?”

He accompanied this elegant ditty with a Jim Crow sort of shuffle, and psalmody whine through his nose.

“What do you mean, you scamp, by his woman wanting to steal his things!” said I—a good deal amused by this cute fashion of getting out of a scrape.

“Lor! ain't you hearn yit? Why, he went and tuck her by the hair and dragged her out'en her old dad's house, and he wooled her, and he larruped her, and he stomped her! He licked her nasty, now I tell you! May-be he warn't in a rarin tarin slatrum! and all just because the yaller slut got scairt and swom 'cross the river when the Injuns comed! He's a regular bustin' old devil! When he gits

a guine, thar's sumph'en to pay, sure as fallin' off a log! He was afeared she and her kin-folks would come stealin' away her things to-night, and take his'n with 'em. That's the reason why he was a beggin' you to be tired, and stay here to-night. He! he! you ain't sharper nor a fox's nose, any how!

“Frog went asleep—  
Lizard come and stole it.  
Bring back my hoe-cake  
You long-tailed nannie!”

He was in the act of bouncing out of the door, with this chorus on his lips—or in his nose, rather—when I intercepted him.

“Not so fast, my bright boy! I want you to show me how to get across the river. I shall go up to the Rancho!”

“Well, won't you tell old Red-head about the hog-meat, and git me licked?”

“Never mind about the meat; but if you don't show me right, about getting over that log, I shall have to lick you myself!”

“You catch a skunk afore you eat him—don't you?” said he with a saucy grin.

The rascal seemed to be a perfect Flibbertigibbet; and, as I knew it would be impossible to find the crossing-place, dark as it was, without his piloting, I propitiated him with a present of tobacco, got my gun and side-arms, and we were off in a minute—he dancing with all sorts of antics before me—flourishing his chunk of meat over his head, between the mouthfuls he tore off from it, mumbling out snatches of curious rhyme—imitations of the wild sounds of the wood and prairie. The night was dark enough anywhere, but when we descended to the last bank of the river, where the timber was very tall and heavy, it was the blackness of darkness; the huge trunks of the cottonwoods themselves could not be distinguished near the ground. The heavy ripple of the deep, rapid stream, was loud and threatening—it seemed to me right at our feet, and I felt all the time as if the next step would take me into it. I was guided only by the sound of the boy's step and his voice, which he took care should be loud enough, and strange enough, too, to wake hollow, screeching, and every other sort of echo, in multiplied reverberations. A huge owl flapped its damp wing close by my ear, and answered him in a hoot so stunningly loud, that my heart fairly jumped again. The boy laughed, and shouted—



"The Injine says—too-who! too-who!  
The old owl says—too-who! too-whit!  
Hunter, watch! he is fooling you!  
Arrows are keen, as well as wit!"

The chorus to this curious snatch was taken up in hootings and screeches, on every side, until it seemed to me that the woods were alive with owls—the gloomy shadows literally torn and quaking with the discord of pipes of every calibre, and the rattle! rattle! snap! snap! of angry beaks. The wolves, too, put in as choristers, and the boy led off again—

"The red wolf says, whoo!—ooh! whoo!  
—ah!

The Injine says, whoo!—ooh! whoo!—oo!  
Though Injine miss'd the figure thar,  
Look-out! 'His arrow is more true!'"

His imitations of the voices of the animals were so complete, that they answered him—the waves of sound swelling louder, more prolonged, until there was a very tempest of dolors, pouring from a hundred howling, hooting, screeching throats, that was positively infernal. I felt oppressed and restless. There was something awful in these moaning, hideous articulations of the deep night—coming as they did, in multiplied, rebounding echoes, through the wide and forest-tangled jaws of darkness! And this imp of the wilds who was leading me! There was nothing in his reckless deviltry, at all calculated to make me feel more comfortable; and when he shouted "Here's the log! look sharp!"—I was altogether doubtful whether he did not intend to play me some elfish trick. It was a perilous passage—almost as bad as Mohammed's Hair Bridge to the Seventh Heaven. It was a single and very slim tree, fallen across the river, and that, too, at very little short of a perpendicular angle; and how to pass it, in this Egyptian gloom, rather puzzled me!

"You'n got to take it coon-fashion—on all fours," said my guide. "Hang close with your claws!"

It looked like a hazardous game indeed! crawling through the intense blackness on my hands and knees up that narrow and trembling bridge—above the fierce rush of the deep, fretful current. I made the venture; and you may conceive how foolish I felt, suspended over the mad waters, the laugh of that strange boy commingling with their eager turbulence. I managed to get across, though, at last, and when I looked back, could faintly distinguish his grotesque figure, leaping and swinging above the

angry chaos. We climbed the hill and were soon at the Rancho. It would be difficult for an American to realize the characteristics of the odd scene that met my view. Passing through the great gate, I was introduced to the square open court—an area of about a quarter of an acre—the low stone houses, on its four sides, lit by rush-lights and resounding with music. In the middle of the court itself was a great fire, over which was swung a mighty kettle of coffee; near it stood tubs of "chickerones"—and women, with long hair hanging loose upon their shoulders, were snatching "tortillas" from the hot stones as they became done, and heaping them in piles around. There were at least five hundred Mexicans crowding, shouting, and jabbering and feasting, in the open space—the men in white cotton shirts, loose trousers and the "Serape"—the women in striped "reberos" of the same material thrown like a veil over their heads. Every one—men, women and children—holding in one hand a tin cup, which was replenished occasionally from the kettle of coffee—and in the other a tortilla and chickerones.

The presence of my sprightly guide among them was very suddenly apparent from the increased confusion and hubbub. I elbowed my way through the dense, noisy throng, to a low, long room, from which the sounds of revelry seemed to proceed most obstreperously. I succeeded, after a good deal of trouble in establishing my position just inside the door, and there a most comical scene presented itself. The most conspicuous figures among a crowd of dancers, were the Colonel and old Madame Cavillo. He in a blanket coat—his pantaloons stuck into the tops of the long clumsy boots I had given him—was stamping it, through the "Jarabo," (a country dance,) dragging after him the old dame, who flung out with amazing vivacity her lean and slippered shanks: her parchment face wrinkled with affectionate simpers, and her keen little black eyes leering most lovingly at her gay Lothario. I thought she meant to kiss him—she gazed so passionately at him! She looked the Venus of an infernal revel! Close behind this exquisite couple came Texas, bouncing and curveting till his head almost touched the ceiling, dragging after him a thumping Mexican damsel. Davis was there, too, "the glass of fashion and the mould of form"—the focus of all

attraction—killing and gorgeous as ever! But I was most amused at the Lieutenant. His wife—who was really a very pretty woman—seemed to be perfectly victimized by the transcendent attractions of Davis; while the poor husband stood gloomily in a corner—a just impersonation of the “green-eyed monster,” watching their billing and cooing with a despairing, vindictive look. I was astonished to hear such fine music—for the Mexicans have some stirring and fantastic airs among their national music. Their dances are singularly mazy and complicated—some that I witnessed were very graceful, but the favorite Fandango is a most listless, monotonous, thrum-pete-thrump of the feet of a single couple placed opposite to each other, while the rest of the company are mere “lookers-on in Verona.” It is associated with old Mexican superstitions. The women were costumed in a style in which antiquated American fashions and semi-barbarous Mexican tastes were oddly blended. The Mexican dandies were all of them arrayed with the same bastard whimsicality.

On the whole, it was a curious, gro-

tesque scene. Attracted by a sudden commotion in the crowd outside, I turned my head. Standing close to me, in the faint light, were two men wrapped in dark cloaks; the silver gleam of the stiletto and pistols showing through the darkness, and a dangerous light of sharp fierce eyes glistening beneath the broad shade of their “sombremos.” I felt instantly that there was fear in this sudden apparition. They looked like the two horsemen of the morning before. I stepped to the Colonel and whispered my suspicions.

“I thought so,” said he.

And almost prostrating the old dame in his hurry, he rushed out, six-shooter in hand! But the two strangers had taken the hint, and were already swinging open the great gate. He followed them, prostrating everything in his way. I attempted to follow, but the multitude of Péons outside interfered, until the gleam of my long knife above their heads made them give way. I got through just in time to see the Colonel fire through the darkness after two men on horseback, clattering away down the hill.

## MARSHAL LANNES.

BONAPARTE always chose his Marshals on the eclectic principle. Wherever he found *one great* quality, he laid it under contribution. The great error, even with sensible men, is, they bring every one to a single standard, and judge him by a single rule. Forgetting the variety everywhere visible in nature, and that the beauty and harmony of the whole depend on the difference of each part, they want to find in every man that proportion and balance of all his qualities which would make him perfect. Disappointed in this, they seek the nearest approximation to it, and hence prefer an ordinary intellect if well balanced, to a great one if great only in some particular direction. Forgetting that such a character is unbalanced only because it has at least *one* striking quality, they reject its aid, or content themselves with more prudent mediocre minds. This may do for a merchant, but not for a government or mili-

tary leader. The collection of twenty thousand common minds furnishes no addition of strength, while the union of one-twentieth of that number of men, each of which possesses force in only one direction, gives immense power. It is true one well balanced intellect is needed to control these conflicting energies, and force them to act in harmony on one great plan, or they will only waste themselves on each other. Bonaparte was such a controlling mind, and he cared not how one-sided the spirits were he gathered about him, if they only had force: he was after *power*, acting in whatever direction. A combination of men, each of whom could do one thing well, must do all things well. Acting on this principle, he never allowed a man of any striking quality to escape him. Whether it was the cool and intrepid Ney, or the chivalric Murat—the rock-fast Macdonald, or the tempestuous Junot—the bold and careful Soult,

or the impetuous Lannes, it mattered not. He needed them all, and he thus concentrated around him the greatest elements of strength that man can wield. It is fearful to see the spirits Napoleon moulded into his ambitious plans, and the combined energy he let loose on the armies of Europe. Knowing the moral power of great and striking qualities, he would have no leader without them. In this he showed his consummate knowledge of human nature, especially of Frenchmen. Enthusiasm and the reliance on one they never trusted in vain, in battle, will carry an army farther than the severest discipline. A company of conscripts would follow Ney as far as a body of veterans a common leader. So would a column charge with Lannes at their head, when with a less daring and resolute man they would break and fly. Moral power is great as physical, even where everything depends on hard blows. Mind and will give to the body all its force—so do they also to an army. The truth of this was witnessed and proved in our struggle with the parent country.

Jean Lannes was born in Lectoure, a small town in Normandy, in April, 1769. His father was an humble mechanic, and never dreaming his son would be anything more, bound him an apprentice to one in his own sphere of life. In ordinary times young Lannes would probably have remained in the humble station in which his birth had placed him, and become in time, perhaps, a passable shoemaker or carpenter. But France was awaking from a long sleep, and the terrible elements that were to change the whole order of things began already to move. A mighty future seemed beckoning the martial talent of France towards it, and a field was opening where genius and daring could win for themselves honor and renown. Young Lannes ran away from his master, and enlisted for a common soldier in the army. Soon after the Revolution was ushered in, he was sent with the army that operated on the Pyrenean frontier. He soon exhibited the two striking traits of his character—traits which eminently fitted him for the scenes in which his life was to pass—viz., reckless daring and unconquerable resolution. These qualities shining out in the heat of battle and in the most desperate straits, soon won for him the regard of his officers, and he was made chief of brigade. In this rank he fought under Lefebvre, but soon after, for some cause known only to

the Convention, which yet scarcely knew the cause of anything it did, he was deprived of his commission and returned to Paris. Amid the conflicting elements that surrounded the young soldier in the French capital, he soon found work to do. An ardent republican, his bold politics and bolder manner could not long escape the notice of government, and he was sent to the army in Italy. As chief of a battalion at Milisimo, he conducted himself so gallantly and fought with such desperate impetuosity, that he arrested Napoleon's attention in the hottest of the engagement, and he made him colonel on the spot. Crossing the Po, soon after, under the enemy's fire, he was the first to reach the opposite bank; and finally crowned his brilliant exploits at Lodi, where he was made general of brigade, and soon after of division. After the successive victories of Montenotte, Milisimo and Dego, Napoleon resolved to push on to Milan. In his progress he was forced to cross the Adda, at Lodi. Twelve thousand Austrian infantry, and four thousand cavalry, with a battery of thirty cannon, stood at the farther extremity of the bridge he was to pass, to dispute its passage. On the first of May, Napoleon arrived at Lodi with his army. The Austrian cannon and musketry began immediately to play on the bridge, so that it seemed impossible to reconnoitre the ground. But Napoleon, sheltering his men behind the houses of the town, sallied out into the midst of the deadly storm, and immediately arranged his plan. Forming a column of seven thousand picked men, he placed himself at their head and rushed on the bridge; but the cannon balls and grape-shot and the bullets of the infantry swept every inch of the narrow defile, and rattled like an incessant shower of hail-stones against its stony sides. So incessant and furious was the discharge, that a cloud of smoke lay like a dense fog round the bridge; yet into its very bosom moved the intrepid column. The awful volley that smote their breasts made these bold men stop and stagger like a strong ship smitten by the wave. For a moment the column wavered and balanced on the pass, for a thousand had already fallen, and it was marching straight into a volcano of fire; but the next moment, seeing themselves supported by the tirailleurs that were fording the stream beneath the arches, they shouted, "*Vive la Republique!*" and, receiving the awful storm of cannon-balls and grape-shot on their un-

shrinking bosoms, rushed forward and bayoneted the artillery-men at their guns. Lannes was the *first man across*, and Bonaparte the *second*. Spurring his excited steed on the Austrian ranks, he snatched a banner from the enemy, and just as he was about to seize another his brave horse sunk under him. In a moment the swords of half a dozen cuirassiers glittered above him, and his destruction seemed inevitable. But extricating himself with incredible exertion from his dying steed, he arose amid the sabre strokes that fell like lightning around him, and leaping on the horse of an Austrian officer behind him, slew him with a single stroke, and hurling him from his saddle, seated himself in his place, and then, wheeling on the enemy, charged the cuirassiers like a thunderbolt, and fought his way through them single-handed, back to his followers. It is said that Napoleon never forgot the bearing of Lannes on that occasion. The fury of a demon seemed to possess him, and the strength of ten men appeared to be concentrated in his single arm. No wonder Bonaparte promoted him on the spot. His own daring was reckless enough, but Lannes' was still more so, and it seems almost a miracle that he escaped death.

Napoleon, whom his soldiers here, for the first time, gave the title of "the little corporal," in honor of his courage, was, ever after, accustomed to speak of this sanguinary struggle as "the terrible passage of the bridge of Lodi." It was by such acts of heroic valor that Lannes acquired the sobriquet among the army of "Orlando" and "Ajax." A few months after, he exhibited the same fearlessness of character and headlong courage, at the passage of the bridge of Arcola. After the battle had raged for some time, the Austrian general, Mitronski, advanced across the bridge, and charged the division under Augereau. The French, repulsing the assault, followed hard after the fugitives, and pressed on the bridge. The slaughter then became terrific. The Austrian artillery opened in their very faces, and they were driven back almost by the concussion of the discharge, and reeling a moment in their footsteps, broke and fled. At this critical juncture, Napoleon seized a standard, and, with his generals around him, advanced through a perfect hurricane of grape-shot, to the centre of the bridge, and planted it there. The brave grenadiers pressed, with lev-

eled bayonets and leaning forms, close after their intrepid leader; but unable to withstand the tempest of fire and of lead which the hotly-worked battery hurled in their faces, seized Bonaparte in their arms, and trampling over the dead and dying, hurried him back through the smoke of battle. But the Austrians pressed close after the disordered columns, and driving them into the marsh in the rear, Bonaparte was left to the middle in the water, and surrounded by the enemy. But the next moment, finding their beloved chieftain gone, the soldiers cried out over the roar of battle, "Forward, to save your general!" Pausing in their flight, they wheeled and charged the advancing enemy, and driving them back over the morass, bore off in triumph the helpless Napoleon. During all this bloody struggle, Lannes never left him; but advancing when he advanced, charging like fire by his side, and covering his person with his own body from the bullets that mowed everything down around them, he received three wounds, which well nigh relieved him of his life. He was suffering from a wound when he entered the battle, but it did not prevent him from doing deeds of incredible daring. Nothing shows the personal exposure and personal daring of the generals, who, one after another, rose to be marshals and dukes, more than the frequency with which they were wounded in their earlier career. Here, after three pitched battles, we find Murat, Ney, Macdonald, Berthier, and Lannes, all wounded.

We cannot follow him through all his after career, but must select out those particulars in which he exhibited his most striking qualities. Lannes was frank, even to bluntness, and so impatient of restraint that he sometimes became insubordinate, but was always brave and firm as a rock in the hour of battle. Indeed, his very impatience of control, and frequent outbursts of passion, when crossed in his purpose, made him rise in excitement and increase in daring, the greater the obstacles that opposed him. Always heading his columns in the desperate onset, and exposing his person where death reaped down the brave fastest, he so fastened himself in the affections of his soldiers, that they would follow him into any extremity. By the openness of his character and brilliancy of his exploits, he fixed himself deeply also in the heart of Napoleon, who always wished him by his side, and leaned



on him in battle as he did on Ney. But the impetuosity of his character demanded constant action, and he grew irritable and unmanly when compelled to suffer without resistance. He could encounter any obstacle against which he was allowed to dash, and would enter any danger where he could swing the arm of defiance; but he had none of the martyr-spirit in him. Pinion him, and he would become frantic under suffering. He needed self-control and the discipline of calm and collected thought. Trained in the camp, and educated in the roar of battle, he was all action and excitement. Yet his excitement made him steady. In the midst of falling thousands and the shock of mighty armies, his mind worked with singular clearness and power. It needed the roar of cannon and the tumult of a battle-field, to balance the inward excitement which drove him on. Hence, in his earlier career, he could not be trusted alone with an army, and Bonaparte knew it best. But he learned the duties of a great leader fast, and Napoleon says himself of him, "I found him a dwarf, I lost him a giant."

In the campaign of Egypt, he appears the same great general, and fought at Aboukir and Acre as he had done before at Lodi and Arcola. At Acre, he nearly lost his life, and was carried from the field of battle desperately wounded. In the march from Alexandria to Cairo, across the desert, Lannes exhibited that impatience and irritability we have before mentioned. In the midst of a boundless plain of sand, without water, parched by the sun, and surrounded by troops of Bedouins, the army gave way to despair, and Murat and Lannes among the rest. Wherever there was a battery to be stormed, or an army of eighty thousand men to be annihilated, none spurred more joyously into the battle than they. But to bear up against the solitude and silence of the desert—against hunger and thirst, and a burning sun—foes that could not be routed or even assailed, required more self-control than either possessed. They became dispirited and desperate, and dashed their plumed hats to the ground and trampled them in the sand; and it is said, even conspired to return to Alexandria with the army. Ney and Macdonald never would have acted thus.

Selected by Bonaparte as one of the eight officers to return with him to Paris, he played an important part in that conspiracy by which the government of

France was overthrown, and the commander-in-chief of the army became the First Consul of the Empire.

Bonaparte having resolved to overthrow the imbecile Directory, and take the power into his own hands, assembled around him the most determined spirits the army could furnish. On the morning that he mounted his steed and rode towards the Tuilleries, resolved to stake everything on one bold move, and pass the power of France into his own hands, seven men, as yet only partially known to fame, were assembled in the palace, sworn to his interests and bound to his destiny. Those seven names afterward made Europe tremble. They were Moreau, Murat, Marmont, Macdonald, Berthier, Lefebvre, and Lannes. Only one was wanting—the intrepid Ney. Napoleon felt the loss of him, and when about to present himself before the bar of the ancients, said, "I would give, at this moment, two hundred millions to have Ney by my side."

Being employed awhile in France, he afterwards joined the army destined to Italy, and shared largely in the glory of that brilliant campaign. He accompanied Napoleon over the Saint Bernard, or rather he went over five days before him. The van-guard, composed of six regiments, was placed under his command, and he set out at midnight for the top of the pass. While Bonaparte was still at Martigny, Lannes was rushing down into Italy and had already opened his musketry on the Austrians. When the whole army was stopped by the fort of Bard, Lannes was still sent on with the advance guard by another path to take possession of the valley of Ivrea.

But one of the most remarkable actions of his life, illustrating best the iron will and almost unparalleled bravery of the man, was his battle with the Austrians at Montebello, which gave him the title of Duke. Still leading the van-guard he had carried over the Saint Bernard, he came upon the Po and upon nearly eighteen thousand Austrians, admirably posted with their right wing resting on the Appenines, and their left reaching off into the plain, while the whole field was swept by batteries that lined the hill-sides. When Lannes came upon this strong array and discovered their position, he saw at once that he must retreat or fight with no hope, except to maintain his ground till Victor, five or six miles in the rear, could come up. Independent of the superior

position of the Austrians, they had between seventeen and eighteen thousand men,\* while Lannes could muster only about eight thousand, or less than half the number of his enemy. But his rear rested on the Po, and fearing the effect of a retreat in such a disastrous position he immediately resolved to withstand the shock of the whole army with his little band. The cheerfulness with which the soldiers advanced to this unequal combat shows the wonderful power he wielded over them. They were not only ready to march on the enemy, but advanced to the charge with shouts of enthusiasm. We scarcely know of a more striking instance of valor than the behaviour of Lannes on this occasion. There was no concealment of the danger—no chance of sudden surprise, and no waiting the effect of some other movement on which his own would depend. It was to be downright hard fighting, and he knew it; fighting, too, against hopeless odds for the first few hours. But all the heroic in him was aroused, and his chivalric bearing before his army inspired them with the highest ardor. Especially after the battle was fairly set, and it was necessary to make one man equal to three, he seemed endowed with the spirit of ten men. He was everywhere present, now heading a column in a charge—now rallying a shattered division—and now fighting desperately, hand to hand, with the enemy. Without waiting the attack of the Austrians, he formed his troops *en echelon*, and advanced to the charge. Two battalions marched straight on the murderous artillery, which, stationed in the road, swept it as the cannon did the bridge of Lodi. The third battalion endeavored to carry the heights, while Watrin with the remainder, marched full on the centre. The battle at once became terrific. Before the furious onset of the French, the Austrians were driven back, and seemed about to break and fly, when a reserve of the Imperialists came up, and six fresh regiments were hurled on the exhausted ranks of the French. The heights of Revetta had been carried, but the fresh onset was too heavy for the victorious troops, and they were driven in confusion down the hill. The centre staggered back

before superior numbers and the awful fire of the artillery; but still Lannes rallied them to another and another effort. Under one of the most destructive fires to which a regiment was perhaps ever exposed, he supported his men by almost superhuman efforts. Standing himself where the shot ploughed up the ground in furrows about him, he not only coolly surveyed the danger, but by his commands and presence held his men for a long time in the very face of death. But it was impossible for any column, unless all composed of such men as Lannes, long to withstand such a fire; and they were on the point of turning and fleeing, when one of the divisions of Victor's corps arrived on the field and rushed with a shout into the combat. This restored for a time the fight. The Austrians were again repulsed, when, bringing up a fresh reserve, the French were forced to retire. Now advancing and now retreating, the two armies wavered to and fro, like mist when it first meets the rising blast. As division after division of Victor's corps came up, the French rallied, till at length, when they had all arrived, and the two armies stood twelve to eighteen thousand—the whole French force and the whole Austrian reserve in the field—the combat became dreadful. Though pressed by such superior numbers, and wasted by such commanding and hotly-worked batteries, Lannes refused to yield one inch of the ensanguined field. It is said that his appearance in this battle was absolutely terrific. Besmeared with powder and blood and smoke, he rode from division to division, inspiring courage and daring in the exhausted ranks, rallying again and again the wasted columns to the desperate charge, and holding them by his personal daring and reckless exposure of his life, hour after hour, to the murderous fire. General Rivaud, battling for the heights, and the brave Statin, charging like fire on the centre, cheered at every repulse by the calm, stern voice of Lannes, fought as Frenchmen had not fought before during the war. The moral power which one man may wield, was never more visible than on this occasion. Lannes stood the rock of that battle field, around which his men clung with a te-

\* Alison, in giving an account of this battle, makes the very slight mistake of putting the Austrian army at fifteen thousand, and the French under Lannes nine thousand. Victor's corps, which joined Lannes during the day, he puts at seven thousand, while Thiers makes it at the most but six thousand. Alison makes the armies equal after Victor came up, while Thiers states the Austrians to be superior by one-third.

nacity that nothing could shake. Had he fallen, in five minutes that battle would have been a rout. On his life hung victory, and yet it seemed not worth a hope, in the awful fire through which he constantly galloped. From eleven in the morning till eight at night, did he press with an army, first of six, then of twelve thousand, on one of eighteen thousand, for nine long hours, without intermission or relief. It was one succession of onsets and repulses, till darkness began to gather over the scene. One fourth of his army had sunk on the field where they fought. At length Riviaud, having carried the heights, came down like an avalanche on the centre, while Watrin led his intrepid column for the last time on the artillery. Both were carried, and the Austrians were compelled to retreat. Bonaparte arrived just in time to see the battle won.\* He rode up to Lannes, surrounded by the remnants of his guard, and found him drenched with blood—his sword dripping in his exhausted hand—his face blackened with powder and smoke—and his uniform looking more as if it had been dragged under the wheels of the artillery during the day, than worn by a living man. But a smile of exultation passed over his features, as he saw his commander gazing with pride and affection upon him, while the soldiers, weary and exhausted as they were, could not restrain their joy at the victory they had won.

Such was the terrible battle of Montebello; and Lannes, in speaking of it afterwards, said, in referring to the deadly fire of the artillery, before which he held his men with such unflinching firmness, "*I could hear the bones crash in my division, like hail-stones against windows.*" A more terrific description of the effect of cannon shot on a close column of men, we never remember to have seen. We have heard of single-handed sea-fights of frigate with frigate, where the firing was so close and hot that the combatants could hear the splitting of the timbers in the enemy's ship at every broadside, but we never before heard of a battle where the bones could be heard breaking in the human body, as cannon balls smote through them. Yet no one would ever have thought of that expression, had it not been suggested to him by what he actually heard. At all

events, Lannes never fought a more desperate battle than this, and as evidence that Napoleon took the same view of it, he gave him the title of Duke of Montebello, which his family bear with just pride to this day.

Bonaparte did not forget the great qualities of a commander he exhibited on this occasion, and ever afterwards placed him in the post of danger. In the battle of Marengo, which took place a few days after, he performed prodigies of valor. Wandering over this renowned battle-field, Lannes was recalled to our mind at almost every step. The river Bormida crosses the plain between the little hamlet, of some half a dozen houses, of Marengo, and Alessandria, where the Austrians lay encamped. Coming out from the city in the morning, and crossing the Bormida under a severe fire of the French, they deployed into the open field, and marched straight on Victor, posted just before Marengo. He had stationed himself behind a deep and muddy stream—resembling, indeed, in its banks and channel, a narrow canal rather than a rivulet—and sustained the shock of the enemy with veteran firmness, for two hours; but overpowered by superior numbers, he was fast losing his strength, when Lannes came up and restored the combat. There, divided only by this narrow ditch—across which the front ranks could almost touch bayonets—did the tirailleurs stand for two hours, and fire into each other's bosoms, while the cannon, brought to within pistol shot, opened horrible gaps in the dense ranks at every discharge, which were immediately filled with fresh victims. It did not seem possible, as I stood beside this narrow stream, across which I could almost leap, that two armies had stood and fired into each other's bosoms, hour after hour, across it.

But we do not design to go into the particulars of this battle. Austrian numbers, and the two hundred Austrian cannon, were too much for Victor and Lannes both together. The little stream of Fontanone was carried, and these two heroes were compelled to fall back on the second line. This, after a desperate resistance, was also forced back. Victor's corps, exhausted by four hours' fighting, finally gave way, and broke and fled towards

\* Alison, with his accustomed correctness, says: "At length the arrival of Napoleon, with the division of Gardanne, decided the victory." This reminds us of his account of the taking of the President by the Endymion.

Lannes' division, which alone was left to stay the reversed tide of battle. Seeing that all now rested on him, he put forth one of those prodigious efforts for which he was remarkable in the hour of extreme danger. Forming his men into squares, he began slowly to retreat. The Austrian army moved *en masse* upon him, while eighty pieces of cannon sent an incessant shower of round and grape shot through his dense ranks, mowing them down at every discharge like grass. Still he held the brave squares firm. Against the charge of cavalry, the onset of infantry, and the thunder of eighty cannon, he opposed the same adamant front. When pressed too hard by the infantry, he would stop and charge bayonet—then commence again his slow and heroic retreat. Thus he fought for two hours—retreating only two miles in the whole time—leaving entire ranks of men on almost every foot of ground he traversed. But between the steady onset of the Hungarian infantry, which halted every ten rods and poured a deadly volley on his steady squares, and the headlong charge of the Imperial cavalry, sweeping in a fierce gallop around them, and the awful havoc of those eighty cannons, incessantly playing on the retreating masses, no human endurance could longer withstand the trial. Square after square broke and fled, and the field was covered with fugitives crying, "*Tout est perdu, sauve qui peut.*" Still Lannes, unconquered to the last, kept those immediately about him unshaken amid the storm and devastation. Scorning to fly, unable to stand, he allowed his men to melt away before the destructive fire of the enemy; while the blowing up of his own caissons, which he could not bring away, added tenfold terror to the thunder of cannon that shook the field. He and the consular guard, also in a square, moved like "living citadels" over the plain, and furnished a wall of iron behind which Bonaparte was yet to rally his scattered army, and turn a defeat into a victory.

From early in the morning till three o'clock in the afternoon, the battle had raged with ceaseless fury, and now the head of Desaix's column, with banners flying and trumpets sounding, was seen advancing with rapid step over the plain. Immediately at the commencement of the battle, Bonaparte dispatched his aides-de-camp with urgent haste for Desaix. But as the report of the first cannon fired on Marengo, rose dull and heavy on the morning

air, the hero of Egypt stood and listened; and as he heard the distant and heavy cannonading, like the roll of far-off thunder, come booming over the plain, he suspected the enemy he was after at Novi, was on the plains of Marengo, and dispatched Savary in haste to the former place to see. Finding his suspicions true, he immediately put his army in motion, and was miles on his way, when the dust of fierce riders in the distance told him he was wanted. Sending forwards his aides-de-camp on the fleetest horses to announce his approach, he urged his excited army to the top of its speed. At length as he approached the field and saw the French army in a broken mass, rolling back over the field, and the Austrians in full pursuit, he could restrain his impatience no longer, and dashing away from the head of his column, spurred his war-steed over the plain, and burst with a headlong gallop into the presence of Napoleon. A short council of the generals was immediately held, when most advised a retreat. "What think you of it?" said Napoleon to Desaix. Pulling out his watch he replied, "The battle is lost, but it is only three o'clock; there is time to gain another." Delighted with an answer corresponding so well with his own feelings, he ordered him to advance, and with his 6,000 men hold the whole Austrian force in check, while he rallied the scattered army behind him. Riding among them, he exclaimed, "Soldiers, you have retreated far enough; you know it is always my custom to sleep on the field of battle." The charge was immediately beat, and the trumpets sounded along the lines. A masked battery of twelve cannon opened on the advancing column of the Austrians, and before they could recover their surprise, Desaix was upon them in a desperate charge. "Go," said he to his aide-de-camp, "tell the First Consul I am charging and must be supported by the cavalry." A volley of musketry was poured in his advancing column, and Desaix fell pierced through the heart by a bullet. His fall, instead of disheartening his men, inspired them with redoubled fury, and they rushed on to avenge his death. Napoleon, spurring by where the fallen hero lay in death, exclaimed, "It is not permitted me to weep now." No, every thought and feeling was needed to wring victory from that defeat. The battle again raged with its wonted fury. But the tide was turned by a sudden charge of Kellerman at the head of his cavalry,



which cutting a column of two thousand men in two, made fearful havoc on the right and left. Soon the whole Austrian army were in full retreat, and being without a commanding officer, broke and fled in wild confusion over the plain. "To the bridge! to the bridge!" rose in terrified shouts, as the turbulent mass rolled back towards the Bormida. Their own cavalry, also in full retreat, came thundering through the broken ranks, and trampling down the fugitives, added to the destruction that already desolated the field. All were hurrying to the bridge, which was soon choked by the crowds that sought a passage; and horses, and riders, and artillery, and infantry, were rolled in wild confusion into the Bormida, that grew purple with the slain. Melas the Austrian general, who at three o'clock, supposing the battle won, had retired to his tent, now rallied the remnants of his few hours before victorious, but now overthrown army, on the farther shores of the river. Twelve thousand had disappeared from his ranks since the morning sun shone upon them, flushed with hope and confident of victory. The combat had lasted for twelve hours, and now the sun went down on the field of blood. Over the heaps of the slain, and across the trampled field, Savary, the aid-de-camp and friend of Desaix, was seen wandering in search of the fallen chief. He soon discovered him by his long and flowing hair, (he had already been stripped naked by those after the spoils,) and carefully covering his body with the mantle of a hussar, had him brought to the head-quarters of the army. Desaix saved Bonaparte from a ruinous defeat at Marengo, and saved him, too, by not waiting for orders, but moving immediately towards where the cannonading told him the fate of the army and Italy was sealing. Had Grouchy acted thus, or had Desaix been in his place at Waterloo, the fate of that battle and the world would have been different.

Lannes wrought wonders on this day, and was selected by Napoleon in consideration of his service, to present to government the colors taken from the enemy. Soon after this, he was sent as ambassador to Portugal, and feeling too much the power Bonaparte and France wielded, treated with that independent nation, as if its king and ministers had been subordinates in the army. He was better at the head of a column than in the Cabinet, and got no honor to himself from his office as ambassador.

This very bluntness and coarseness, which rendered him fit only for the camp and the battle-field, and which indeed was the cause of his receiving this appointment, were sufficient reasons for his not having it. Being commander of the Consular guard, he administered its chest and disbursed the money intrusted to him with such prodigality and recklessness that there was a general complaint. It was done with the full knowledge and authority of Napoleon, yet he reproved him for it when the excitement became too great to be any longer disregarded. This exasperated Lannes so much that he indulged in the most abrupt language towards the First Consul, and resolved to replace the money that had been expended. But from all his victories he had little left, and Augereau was compelled to loan him the sum he needed, saying, "There, take this money; go to that ungrateful fellow for whom we have spilt our blood; give him back what is due to the chest, and let neither of us be any longer under obligations to him." But Napoleon could not afford to lose two of his best generals, and thinking it was better to keep such turbulent spirits apart, sent Augereau to the army and Lannes as ambassador to Portugal.

We shall not follow Lannes through his after engagements. He became one of the firmest props of Napoleon, and fought at Austerlitz, Jena, Eylau, and Friedland with his accustomed valor. In the campaign of Eylau, at the battle of Pultusk, he advanced with his corps of 35,000 men in the midst of driving snows, and knee-deep in mud, up to the very muzzles of a hundred and twenty cannon. In 1808, we find him on his way to join the army in Spain. In crossing the mountains near Mondragon he came very near losing his life. His horse stumbled and in the effort to rally fell back on him, crushing his body dreadfully by his weight. He who had stormed over so many battle-fields, and been hurled again and again from his seat amid trampling squadrons as his horse sunk under him, and yet escaped death, was here on a quiet march well nigh deprived of his life.

The surgeon, who had seen a similar operation performed by the Indians in Newfoundland, ordered a sheep to be skinned immediately, and the warm pelt sewed around the wounded Marshal's body. His extremities in the meantime were wrapped in hot flannels, and warm drinks were given him. In ten minutes he was asleep, and shortly after broke into

a profuse perspiration, when the dangerous symptoms passed away. Five days after he led his columns into battle at Tuedla, and completely routed an army of forty thousand men. During the next year we find him before Saragossa, taking the command of the siege which had been successively under the command of Moncey and Junot. The camp was filled with murmurs and complaints. For nearly a month they had environed the town in vain. Assault after assault had been made; and from the 2d of January, when Junot took the command, till the arrival of Lannes in the latter part of the month, every night had been distinguished by some bloody fights, and yet the city remained unconquered. Lannes paid no heed to the complaints and murmurs around him, but immediately, by the promptitude and energy of his actions, infused courage into the hearts of the desponding soldiery. The decision he was always wont to carry into battle was soon visible in the siege. The soldiers poured to the assault with firmer purpose, and fought with more resolute courage. The apathy which had settled down on the army was dispelled. New life was given to every movement; and on the 27th, amid the tolling of the tower bell, warning the people to the defence, a grand assault was made, and after a most desperate conflict the walls of the town were carried, and the French soldiers fortified themselves in the convent of St. Joseph.

Unyielding to the last, the brave Saragossans fought on, and, amid the pealing of the tocsin, rushed up to the very mouths of the cannon, and perished by hundreds and thousands in the streets of the city. Every house was a fortress, and around its walls were separate battlefields, where deeds of frantic valor were done. Day after day did their single-handed fights continue, while famine and pestilence walked the city at noonday, and slew faster than the swords of the enemy. The dead lay piled up in every street, and on the thick heaps of the slain the living mounted and fought with the energy of desperation for their homes and their liberty. In the midst of this incessant firing by night and by day, and hand-to-hand fights on the bodies of the slain, ever and anon a mine would explode, blowing the living and dead, friend and foe, together in the air. An awful silence would succeed for a moment, and then over the groans of the dying would ring again the rallying cry of the brave

inhabitants. The streets ran torrents of blood, and the stench of putrified bodies loaded the air. Thus for three weeks did the fight and butchery go on within the city walls, till the soldiers grew dispirited, and ready to give up the hope of spoils if they could escape the ruins that encompassed them. Yet theirs was a comfortable lot to that of the besieged. Shut up in the cellars with the dead—pinched with famine, while the pestilence rioted without mercy and without resistance—they heard around them the incessant bursting of bombs, and thunder of artillery, and explosions of mines, and crash of falling houses, till the city shook night and day, as if within the grasp of an earthquake. Thousands fell every day, and the town was in a mass of ruins. Yet unconquered, and apparently unconquerable, the inhabitants struggled on. Out of the dens they had made for themselves amid the ruins, and from the cellars where there were more dead than living, men would crawl to fight, who looked more like spectres than warriors. Women would man the guns, and, musket in hand, advance fearlessly to the charge; and hundreds thus fell, fighting for their homes and their firesides. Amid this awful scene of devastation—against this prolonged and almost hopeless struggle of weeks—against the pestilence that had appeared in his own army, and was mowing down his own troops—and above all, against the increased murmurs and now open clamors of the soldiers, declaring that the siege must be abandoned till reinforcements could come up—Lannes remained unshaken and untiring. The incessant roar and crash around him—the fetid air—the exhausting toil, the carnage and the pestilence, could not change his iron will. He had decreed that Saragossa, which had heretofore baffled every attempt to take it, should fall. At length, by a vigorous attempt, he took the convent of St. Lazan, in the suburbs of the town, and planted his artillery there, which soon leveled the city around it with the ground. To finish this work of destruction by one grand blow, he caused six mines to be run under the main street of the city, each of which was charged with three thousand pounds of powder. But before the time appointed for their explosion arrived, the town capitulated. The historians of this siege describe the appearance of the city and its inhabitants after the surrender as inconceivably horrible. With only a single wall between them and the enemy's trenches, they had

endured a siege of nearly two months by 40,000 men, and continued to resist after famine and pestilence began to slay faster than the enemy. Thirty thousand cannon balls and sixty thousand bombs had fallen in the city, and fifty-four thousand of the inhabitants had perished. Six thousand only had fallen in combat, while forty-eight thousand had been the prey of the pestilence. After the town had capitulated, but twelve thousand were found able to bear arms, and they looked more like spectres issuing from the tombs than living warriors. Saragossa was taken; but what a capture! As Lannes rode through the streets at the head of his victorious army, he looked only on a heap of ruins, while six thousand bodies still lay unburied in his path. Sixteen thousand lay sick, while on the living famine had written more dreadful characters than death had traced on the fallen. Infants lay on the breasts of their dead mothers, striving in vain to draw life from the bosoms that never would throb again. Attenuated forms, with haggard faces and sunken eyes and cheeks, wandered around among the dead to search for their friends—corpses bloated with famine lay stretched across the threshold of their dwellings, and strong-limbed men went staggering over the pavements, weak from want of food, or struck with the pestilence. Wo was in every street, and the silence in the dwellings was more eloquent than the loudest cries and groans. Death, and famine, and the pestilence had been there in every variety of form and suffering. But the divine form of Liberty had been there too, walking amid those mountains of corpses and ruins of homes, shedding her light through the subterranean apartments of the wretched, and with her cheering voice animating the thrice-conquered, yet unconquered, still to another effort, and blessing the dying as they prayed for their beloved city.

But she was at last compelled to take her departure, and the bravest city of modern Europe sunk in bondage. Still, her example lives, and shall live to the end of time, nerving the patriot to strike and suffer for his home and freedom, and learning man everywhere how to die in defending the right. A wreath of glory surrounds the brow of Saragossa, fadeless as the memory of her brave defenders. Before their achievements—the moral grandeur of their firm struggle, and the depth and intensity of their sufferings—the bravery and perseverance of the French and Lannes sink into forgetful-

ness. Yet, it was no ordinary task that Lannes had given him, and it was by no ordinary means that he executed it. It required all the iron in his nature to overcome the obstacles that encompassed him on every side.

The glory which belongs to him from the manner in which he conducted this siege to issue, has been somewhat dimmed by his after conduct. He is charged with having, three days after the siege, dragged the tutor and friend of Palafox from his bedside, where he was relieving his wants and administering to him the consolations of religion, and bayoneting him and another innocent chaplain on the banks of the Ebro. He is charged, also, with levying a contribution of 50,000 pairs of shoes and 8,000 pairs of boots, and medicines, &c., necessary for a hospital, on the beggared population. He is accused of rifling a church of jewels to the amount of 4,687,000 francs, and appropriating them all to himself; and worst of all, of having ordered monks to be enveloped in sacks and thrown into the river, so that when their bodies were thrown ashore, in the morning, they would strike terror into others. He is also accused of violating the terms of capitulation, by sending the sick Palafox, the commander-in-chief, a close prisoner to France, when he had promised to let him retire wherever he chose. These are Mr. Alison's allegations; but as Madame d'Abrantes is his only authority, we doubt them all, in the way they are stated, while some of them carry their falsehood in their very inconsistency; and we hardly know which to wonder at most, the short-sighted pique of Madame Junot, (alias d'Abrantes,) which could originate them, or the credulity or national prejudice of Mr. Alison, which could endorse them.

Junot had been unsuccessful in conducting the siege, and had been superseded in the command by Lannes, who had won the admiration of Europe by his success. That Junot's wife should feel this, was natural; and that her envy should cause her to believe any story that might meet her ear, tending to disparage her husband's rival, was womanly. Besides, Junot received less of the spoils than he would have done had he been commander-in-chief. This also warped the fair historian's judgment, especially the loss of the jewels of our Lady of the Pillar, which she declares Lannes appropriated to himself. All this was natural in her, but how Mr. Alison could suppose any would believe that Lannes

wreaked his entire vengeance against the city of Saragossa and its brave inhabitants, by spearing two harmless priests on the banks of the Ebro, is passing strange. He must find some other reason for the act before any one will believe it. But the accusation that he drowned a few monks to frighten the rest, is still more laughable. One would think that Lannes considered himself in danger from monkish conspiracies, that he resorted to this desperate method of inspiring terror. If we were to believe the story at all, we should incline to think that he did it for mere amusement, to while away the tedious hours, in a deserted, ruined, famine-struck, and pestilence-struck city. To inspire a sepulchre and hospital with terror, by drowning a few monks, was certainly a very original idea of Lannes.

In the storming of Ratisbon, Lannes exhibited one of those impulsive deeds which characterized him. Seeing a house leaning against the ramparts, he immediately ordered the artillery against it, which soon broke down the walls, and left them as a sort of stepping-stones to the tops of the walls of the city. But such a destructive fire was kept up by the Austrians on the space between the French and it, that they could not be induced to cross it. At length, Lannes seized a scaling ladder, and rushing into and through the tempest of balls that swept every foot of the ground, planted it against the ruined house, and summoned his men to follow. Rushing through the fire, they rallied around him, scaled the walls, and poured into the city, and opened the gates to the army.

But now we come to the close of Lannes' career. He had passed through three hundred combats, and proved himself a hero in fifty-three pitched battles. Sometimes the storm swept over him, leaving him unscathed; sometimes, desperately wounded, he was borne from the field of his fame, but always rallied again to lead his host to victory. But his last battlefield was at hand, and one of the strongest pillars of Napoleon's throne was to fall amid clouds and darkness.

In the summer of 1809, after Vienna had fallen into his hands, Napoleon determined to pass the Danube and give the Archduke Charles battle, on the farther shore. The Danube, near Vienna, flows in a wide stream, embracing many islands in its slow and majestic movement over the plain. Bonaparte resolved to pass it

at two points at the same time, at Nussdorf, about a mile above Vienna, and against the island of Lobau, farther down the river. Lannes took charge at the upper pass, and Massena of the lower—the two heroes of the coming battle of Aspern. Lannes, failing in his attempt, the whole army was concentrated at Lobau. On the evening of the nineteenth of May, Bonaparte surprised the Austrians on the island, and, taking possession of it and the other islands around it, had nothing to do but throw bridges from Lobau to the northern bank of the Danube, in order to march his army over to the extended plains of Marchfeld, that stretched away from the bank to the heights of Bisomberg, where lay the Archduke with a hundred thousand men. Through unwearied efforts Bonaparte was able to assemble on the farther shore, on the morning of the 21st, forty thousand men. The Archduke saw, from the heights he occupied, every movement of the French army, which seemed, by its rashness and folly, to be rushing into the very jaws of destruction.

It was a cloudless summer morning, and as the glorious sun came flashing over the hill-tops, a forest of glittering bayonets sent back its beams. The grass and the flowers looked up smilingly to the blue heavens, both of which seemed unconscious of the carnage that was to end the day. Just as the sun had reached its meridian, the command to advance was heard along the heights, answered by shouts that shook the earth, and the roll of drums and thousands of trumpets, and wild choruses of the soldiers. While Bonaparte was still struggling to get his army over the bridge, while Lannes' corps was on the farther side, and Davoust in Vienna, the Austrian army of eighty thousand men came rolling down the mountain-side and over the plain, like a resistless flood. Fourteen thousand cavalry accompanied this magnificent host, while nearly three hundred cannon came trundling, with the sound of thunder, over the ground. The army advanced in five awful columns, with a curtain of cavalry in front to conceal their movements and direction. Bonaparte looked with an unquiet eye on this advancing host, while his own army was still separated by the Danube. In a moment the field was in an uproar. Lannes, who had crossed, took possession of Essling, a little village that stood half a mile from the Danube; and Massena of Aspern, another village,



standing at the same distance from the Danube, and a mile and a half from Essling. These two villages were the chief points of defence between which the French army was drawn up in line. Around these two villages, in which were entrenched these two renowned leaders, were to be the heat and strength of the battle. Three mighty columns were seen marching with firm and rapid steps towards Aspern, while towards Essling, where the brave Lannes lay, a countless host seemed moving. Between, thundered the two hundred and ninety pieces of cannon, as they slowly advanced, enveloping the field in a cloud of smoke, blotting out the noon-day sun, and sending death and havoc amid the French ranks. As night drew on, the conflict became awful. Bursting shells, explosions of artillery, and volleys of musketry, were mingled with shouts of victory and cries of terror; while over all, as if to drown all, was heard at intervals the braying of trumpets and strains of martial music. The villages in which Massena and Lannes maintained their ground with such unconquerable firmness, took fire, and burned with a red flame over the nightly battle-field, adding ten-fold horror to the work of death. But we do not intend to describe the first day's battle. We shall refer to it again when we speak of Massena and Bessières, who fought with a desperation and unconquerable firmness that astonished even Napoleon. At eleven o'clock at night the uproar of battle ceased, and through the slowly retiring cloud of war that rolled away towards the Danube, the stars came out one by one, to look on the dead and the dying. Groans and cries loaded the midnight blast, while the sleeping host lay almost in each other's embrace. Bonaparte, wrapped in his military cloak, lay stretched beside the Danube, not half a mile from the enemy's cannon. The sentinels could almost shake hands across the space that intervened; and thus the living and the dead lay down together on the hard-fought field, while the silent cannon, loaded with death, were pointing over the slumbering hosts. Lulled by the Danube, that rolled its turbulent flood by his side, and canopied by the stars, Napoleon rested his exhausted frame while he revolved the disastrous events of the day, and pondered how he might redeem his error. Massena had lost most of Aspern; but Lannes still held Essling, and had held it during one of the most

sanguinary struggles of that fiercely fought battle. Early in the morning, as soon as the light broke over the eastern hills, the two armies were again on their feet, and the cannon opened anew on the walls of living men. The French troops were dispirited, for the previous day had been one of defeat; while the Austrians were full of hope. But the rest of Lannes' corps had crossed the Danube during the night, while Davoust, with nearly thirty thousand more, was marching with flying colors over the bridge. The Archduke had also received reinforcements, so that two armies of about a hundred thousand each, stood ready to contest the field on the second day. At the commencement of the onset, Lannes was driven for the first time from Essling; but St. Hilaire coming up to his aid, he rallied his defeated troops and led them back to the charge, re-took the place, and held it, though artillery, infantry and cavalry thundered upon it with shocks that threatened to sweep the village itself from the plain.

At length, Bonaparte, tired of acting on the defensive, began to prepare for his great and decisive movement on the centre. Massena was to hold Aspern, Davoust to march on Essling, while Lannes, the brave Lannes, who had fought with such courage and almost superhuman energy for two days, was ordered with Oudinot to force the centre and cut the Austrian army in two. Bonaparte called him to his side, and from his station behind the lines which overlooked the field, pointed out to him the course he wished him to take. Lannes spurred to his post, and when all was ready Bonaparte came riding along the lines to animate the soldiers in the decisive onset that was about to be made. The shouts of "*Vive l'Empereur!*" with which they received him, was heard above the roar of battle, and fell with an ominous sound upon the Austrian lines. Apprised by the shouts where the emperor was passing, they immediately turned their cannon in that direction, hoping by a chance shot to strike him down. General Monthier was killed by his side, but the mightiest man of blood of all was not to fall by the sword. In a few minutes Lannes' awful columns were on the march, and moved with rapid step over the field. Two hundred cannon were placed in front, and advanced like a rapidly moving wall of fire over the cumbered ground. Behind was the cavalry—the irresistible cuirassiers that had swept so many battle-fields

for Napoleon, and before the onset of which the best infantry of Europe had gone down.

The Imperial Guard formed the reserve. Thus arrayed and sustained, the terrible columns entered the close fire of the Austrian batteries and the deadly volleys of the infantry. Lannes knew that the fate of the battle was placed in his hands, and that the eye of Napoleon was fixed with the deepest anxiety upon him. He felt the weight of Europe on his shoulders and determined to sustain it. In front, clearing a path for his strong legions, went the artillery, sending death and havoc over the field. Around the threatened point the whole interest of the battle gathered, and the most wasting and destructive fire opened on Lannes' steady ranks. But nothing could resist the weight and terror of their shock. Through and through the Austrian lines they went, with the strength of the inrolling tide of the sea. Into the wild battle-gorge thus made by their advance the cavalry plunged at headlong gallop, shaking their sabres above their heads and sending their victorious shouts over the roar of the artillery. They dashed on the ranks with such fury that whole battalions broke and fled, crying, "All is lost." Amid this confusion and terror still advanced the awful column of Lannes. On, on it moved with the strength of fate itself, and Bonaparte saw with delight his favorite marshal wringing the crown from Germany and placing it on his head. At length the enveloped host pierced to the reserve grenadiers of the Austrian army, and the last fatal blow seemed about to be given. In this dreadful crisis the Archduke showed the power and heroism of Napoleon himself. Seeing that all was lost without a desperate effort, and apparently not caring for his life if defeat must be endured, he spurred his steed among the shaking ranks, rallying them by his voice and bearing to the charge, and seizing the standard of Zach's corps, which was already yielding to the onset, charged at their head like a storm. His generals, roused by his example, dashed into the thickest of the fight, and at the head of their respective divisions fell like so many rocks upon the head of Lannes' column. Those brave officers, almost to a man, sunk before the destructive fire that opened upon them, but that dreadful column was checked for the first time in its advance, and stood like a living rock amid its foes. The Austrians

were thrown into squares and stood like so many checkers on the field. Into the very heart of these Lannes had penetrated and stopped. The empire stopped with him, and Napoleon saw at once the peril of his chief. The brave cuirassiers that had broken the best infantry of the world were immediately ordered to the rescue. Shaking the ground over which they galloped—their glittering armor rattling as they came—they burst into the midst of the enemy and charged the now steady battalions with appalling fury. Round and round the firm squares they rode, spurring their steeds against the very points of the bayonets, but in vain. Not a square broke, not a column fled; and, charged in turn by the Austrian cavalry, they were compelled to fall back on their own infantry. Still Lannes stood amid the wreck and carnage of the battle-field around him. Unable to deploy so as to return the terrific fire that wasted him, and disdaining to fly, he let his column melt away beside him. Being in squares the Austrians could fire to advantage, while Lannes could only return it from the edges of his column. Seeing that he dare not deploy his men, the Archduke had the cannon wheeled to within five rods of them and there played on the dense masses.

Every discharge opened huge gaps, and men seemed like mist before the destructive storm. Still the shivering column stood as if rooted to the ground, while Lannes surveyed with a flashing eye the disastrous field from which he saw there was no relief. Added to this, the ammunition began to fail, and his own cannon were less hotly worked. This completed the disaster; while, to render his situation still more desperate, a regiment had dashed in between his lines, which being immediately followed by others, cut them in twain. Added to all, the news began to fly over the field that the bridges over the Danube had been carried away by the heavy boats that had been floated down against them. Still Lannes and his column disdained to fly, and seemed to resolve to perish in their footsteps. The brave Marshal knew he could not win the battle but he knew also he could die on the spot where he struggled for a continent. Bonaparte, as he looked over the disordered field from his position, saw at once that the battle was lost. Still, in this dreadful crisis he showed no agitation or excitement. Calm and collected as if on a mere review he

surveyed the ruin about him, and by his firm bearing steadied the soldiers and officers amid whom he moved. Seeing that no time was to be lost if he would save the remnant of his army, for the bridges were fast yielding to the swollen stream, he ordered a general retreat. Lannes and his column then began to retire over the field. In a moment the retreat became general, and the whole army rolled heavily towards the bridge that crossed to the island of Lobau. As they concentrated on the shore it became one mighty mass, where not a shot could fall amiss.

The Archduke wishing to complete his victory by a total rout, immediately advanced with his whole army upon them. His entire artillery was brought up and arranged in a semicircle around this dense mass crowding on to the bridges, and poured their awful storm into a perfect mountain of flesh. It seemed as if nothing could prevent an utter overthrow; but Lannes, cool and resolute as his emperor, rallied his best men in the rear, and covered the retreating and bleeding army. With Massena by his side, now steadying their troops by his words and actions, now charging like fire on the advancing lines, he saved the army from burial in the Danube.

Lannes never appeared to better advantage than on this occasion. His impetuosity was tempered by the most serious and thoughtful actions, and he seemed to feel the importance of the awful mission with which he had been intrusted. At length dismounting from his horse to escape the tempest of cannon balls which swept down everything over the soldiers' heads, he was struck by a shot as he touched the ground, which carried away the whole of the right leg, and the foot and ankle of the left. Placed on a litter, he was immediately carried over the bridge into the island, where Bonaparte was superintending some batteries with which to protect the passage. Seeing a litter approach him, Napoleon turned, and, lo, there lay the bleeding and dying Lannes. The fainting Marshal seized him by the hand, and in a tremulous voice exclaimed, "Farewell, sire. Live for the world, but bestow a passing thought on one of your best friends, who in two hours will be no more."

The roar of battle was forgotten, and reckless alike of his defeat and the peril of his army, of all, save the dying friend by his side, Napoleon knelt over the rude

couch and wept like a child. The lip that had seemed made of iron during the day, now quivered with emotion, and the eye that had never blenched in the wildest of the battle, now flowed with tears. The voice of affection spoke louder than the thunder of artillery, and the marble-hearted monarch wept. And well he might. For there before him, mangled and torn, lay the friend of his youth, and the companion of his early career—he who charged by his side at Lodi and Arcole—saved his army at Montibello, and Italy at Marengo—who opened Ratisbon to his victorious army—nay, the right hand of his power—broken and fallen forever.

"Lannes," said he, in his overpowering emotion, "Do you not know me? it is the emperor, it is Bonaparte, your friend; you will yet live." "I would that I might," replied the dying hero, "for you and my country, but in an hour I shall be no more." Soon after he fainted away, and then became delirious. He lingered thus for nine days, now charging in his frantic dreams at the head of his column, now calling wildly on the emperor to come to him, and now raving about his cruel fate. He would not hear of death, and when told that he must die, that nothing could save him—"Not save a marshal of France!" he exclaimed, "and a duke of Montibello! Then the emperor shall hang you." No, death spares neither marshals nor dukes, and the hero of so many combats had fought his last battle.

Lannes was prodigal of money, notwithstanding the attempt of Mr. Alison to make him covetous; frank even to bluntness, and unconscious of fear. In the midst of battle, his penetrating eye detected every movement with precision. Napoleon himself says of him: "Lannes was wise, prudent, and withal bold; gifted with imperturbable *sang froid* in presence of the enemy." There was not a general in the French army, that could manœuvre thirty thousand infantry on the field of battle, so well as he. He was but forty years of age when he died. His soldiers loved him like children, and a poor officer never was forgotten by him. His wife, whom he married in poverty, and from the lower ranks of life, partook of his generosity and kindness.

The eldest son of Lannes, the present Duke of Montibello, married not many years ago, in Paris, a daughter of Charles Jenkinson, an English gentleman.

## BIG ABEL AND THE LITTLE MANHATTAN.\*

It is not common to have a book given us, which is the creation, not only in thought and sentiment, but in its plan and idea, of the author's brain. We have works of fiction founded on fact, and works of philosophy founded on fiction. We have also travels and sketches, &c.; but a book that is in itself a sheer conception of the author is seldom put before us. "*Big Abel and the Little Manhattan*" is, at least, such a book; and did it possess no other merit than this, would deserve a respectable hearing, if nothing more. Mr. Mathews has written a good deal, with very various degrees of merit; but we scarcely know of a writer among us who, with whatever faults of composition, has been treated less fairly, or judged with less discrimination. Of his former writings, we have nothing to say, and but a few words of the present; but those few shall be spoken candidly.

The book, "*Big Abel and Little Manhattan*," is, if we may use the expression, New York City Idealized. Two lads—one tracing his ancestry to the Indian chiefs, who first owned this noisy island of ours; the other deriving his descent from Hudson, the first navigator who explored with doubt and anxiety the perilous region of New York Bay, Fulton Ferry, and the Hudson River—come to the conclusion that the present city belongs to them. Under this very sensible impression, they go about from street to street to survey their somewhat extensive property, and make a fair and equitable division of it. The sights they see, and the sounds they hear, and the incidents they meet with, constitute the filling up of the book. Mr. Mathews is a thorough Metropolitan, and has an affection for whatever is characteristic in New York, especially in its low life. In the manner of Dickens, he is poking his nose into every ale-house and tavern, river-pier and dim alley, where anything worth seeing is to be found; and he is certainly successful in catching, often to the nicest point of truthfulness, the impressions of incident and character that meet his notice—mostly, too, in a way of his own,

though it cannot be denied that he has plainly studied, and hardly to his advantage with the public, the inimitable sketches of the London Novelist. Mr. Mathews has a way of expressing himself, which has an attraction for the lovers of minute picturing. He is able to place the object, or group, or incident, or whatever it may be, before us like a painting. And this is done with so little display, that we are surprised to find it has been done at all. He has the faculty, also, of seeing the picturesque in very common occurrences, and feeling the poetry attached to very ordinary matters. Take, for instance, the description of two boys flying a kite, an incident few notice, and still fewer would think of describing; and another on page 26, one of the last an ordinary man would have selected, but the best for such as have the skill to throw the garb of their own sentiment around it. The latter is, in fact, a description of the author's own feelings, as he has sometimes lain awake and heard the carts late at night, one after another, rumbling up the city to their homes.

"There is a yellow house, not far from the Parade Ground, famous for the cider that he draws; Newark cider, fresh and latest, a full supply; and you may go there and drink when you choose, and that little public house is always at home, with a glass for you. Thither Lankey and Big Abel repaired; and there they supped, with many a draught, now that they were in for work, of that golden drink; and then they chambered themselves up stairs. But not asleep quite as soon as you might think, for this was a cart-street in which they lodged; in other words, an avenue patronized by those lay-bishops, the carting gentry, in their morning and evening trips up and down town; and, returning now from the day's work, they kept up a buzz of wheels for hours. Sometimes a slow cart, they could tell each one by his sound, sauntering along with a tired horse; and a fast cart, heard in his approach far off, thundering by the door, and rattling away, for whole squares. Then three or four carts in company, with a talk of cartmen; these were moderate movers; to each other as they jogged along. Then a couple of

\* *Big Abel and the Little Manhattan.* Books—No. 5. By Cornelius Mathews.

Wiley & Putnam's Library of American



racers, full speed after each other; tearing up the street, and shaking the windows, nay, the very houses, to the foundation. Then long, long after these, a cart going home late, (there was a ship in down town somewhere, that night, I know,) having the whole street to himself, and keeping up his melancholy song till the ear ached, and would not believe it could ever go out of hearing. And by that time, (whenever it came,) the Little Manhattan and Big Abel were asleep."

The genuine New York negro urchin is readily recognized. The description is happily done.

"There went tumbling before them just then, before swarthy Lankey, fair-complexioned Abel, in the sunshine a little negro boy. His garments, coarse and clean, were blotched with patches:—no doubt of that. A rainbow would have faded before him, and made a leap into the sky for another set of colors at the very sight. He was black: very black. His hair was woolly as the old ram's fleece. His foot, flat as the ground it stood on. And yet, was there ever such a great black earthen jar-full, with its two wide ears, of genuine jollity, the very extract and oil of gladness, such a bounding, rolling, laughing piece of broad mirth? A great green bag, plethoric with morning lessons, slung over his shoulder: sometimes on the sidewalk, then over the gutter into the very middle of the street, at the tail of an omnibus, on his own account: then back again with a cry for the shoulder's sake of some other: then zigzagging his way along the stoops, making the most, with his great broad eyes, of the shop windows."

There is a capital description of Sunday on the Battery, but too long to quote, with many others of equal merit. Throughout the volume, too, there are numerous brief touches, quite original and beautiful. Three or four may be instanced.

"In the still evening air, far, far on high, a night-hawk, wheeling up and down, or crossing to and fro, kept up his lonesome cry, and seemed like a troubled spirit that had broken away from the city, and yet was somehow tangled and perplexed within its view."

"They sleep: Lankey like a dark old wood, whose leaves are still, and all at once! Big Abel, as a giant boat who takes in slumber for a week to come, against the river-shore! There is no sound astir; the silence walks about and wears his cloak of Sabbath air, that no man knows or sees or feels he is abroad."

"And a lazy summer's day was that; so lazy and sleepy in his look, the wonder is

that he got abroad at all, and had not lain behind the clouds forever."

"The shadow of a cloud was flying up the city, leaping streets, houses, steeples, every barrier, that man builds to make secure community; but not swifter than the spirit of a man they led in irons toward the Tombs, hurried on to where no shadow of his should ever fall upon the sunny street again."

In respect to characters, continued through the book, not much is attempted. There is a gleam, here and there, of a pale poor student, and—whom he loved—"a fair gentle shape that might have lived in the sunbeam or moonbeam forever, and fallen by no act or seeking of its own to earth, among the shadows and gross cares of common clay." But "her shadowy hand he sought in vain, for it flew away ever as he stretched his own towards it." The "Scholar" could not take her home to what might prove a life of yet deeper poverty. This was sorrowful to the girl: "She was clearly not at ease. She moved about, singing sometimes as before, then silent, glad, pensive, hopeful, despairing, as a scholar's mistress, in this land of ours, well may be." Finally, the Student's "book," on which he had labored so long—hoping, fearing—is accepted, published, and the two are, in the end, happily united. This little delicate thread, running through the story like a line of light, and appearing here and there above the groundwork of the web, adds in its way a touching interest.

The contrast, also, between "Big Abel," the good-natured, sturdy descendant of the old Dutch Navigator—and, in right of such parentage, a commerce-loving, store-claiming admirer of wharves and broad waters—with the silent, memory-brooding slip of Indian blood, whom the whisperings of the wind and trees are always carrying back to thoughts of his native race and the old wilderness—this little contrast is skillfully and pleasantly maintained, and leaves at the end of the book a gentle impression on the reader's mind. The Indian boy appeals especially to our imagination, and in various simple passages. Thus when "Big Abel" first proposes, under the shadowy claim which the author institutes for them, to divide the city with "Little Manhattan":

"The Little Manhattan was silent at the question. So silent that he seemed to be a part of Nature there: as one of the dark, old, slumbering, silent trees: and not a man of speech."

"Hard, hard it was to him to come to any terms by which his Great Inheritance, as he in his poor visionary way accounted it, should pass away; to part with any share the least or greatest of all that wide domain the City held. It was the best (Big Abel said); and so it was. The Bay rippled gently: as in counsel to the act: softly the old oak trees whispered, far on high, holding council thereabout themselves: and toward the moon the old Tower held up its head, and, white as she and fair to look on, might have agreed with her that this of Big Abel and Lankey was well done."

Again, when they come to Washington Square, once "The Potter's Field," an old burial-ground:

"This is mine, I think!" Lankey said; but so sorrowfully that he seemed to claim a property that would be a burthen to his spirit to own.

"Big Abel pondered the claim. He recollected how, from time to time, the plough, when they were shaping this field, had used to come upon a mouldering bone; that even now old flinty arrowheads were found about; it was but a waste ground, a few idle trees: he could not deny the claim that Lankey made."

And again, when they gaze from the Battery over the lovely waters of the Bay:

"What was the Little Manhattan claiming, that he sate so still? Was it the Bay—the Islands—the Battery itself, perhaps? He kept his eye long fixed upon a spot toward the point, and there sprung up after a while to his fancy, in its visionary way, a red blaze; and, gathering round it, in its dusky light, there sate a score of men who seemed to have come out of the darkness, and brought a tinge of it upon their cheeks, and in their soft black eyes and sombre brows. They inclined their eyes upon the ground; or, lifting them, peered within the blaze."

Finally, at the close, when they have a feast, celebrating the friendly division of the Island between them, Big Abel takes his company upon the house-top:

"Then sprung up afresh Big Abel's boast. He counted up his stores, his streets, his ships, his goods of every clime, his piles on piles of every mortal ware; His shops of iron and brass; His steeple-stacks; His gates: His squares; His roads that run through all the Island's length; His aqueducts; His stages, thousand fold and doubling day by day; His Rail-Tracks, swift as light and shot as far; then swelling up he talked; without a check from any one of all his company; of Bridges cast to Brooklyn, with a thought; another, with scarce

less dispatch, to Jersey shore; and then he spanned the Islands of the Bay, and caught them in his vasty net. What wonder then, there grew in Lankey Fogle's heart (poor sad Manhattan); a hope that downfall yet would come upon the city's head; that yet he would be led against his will, oh sorely now against his will, back to his old drear wilderness; and lose himself in dusky lodges and by silent paths as though he had never been. It cannot be, I fear as yet, poor Lankey! No, No. The city grows; but you decline, I fear. . . .

You still will wander as a shade, the city-hills, the city-slopes; sit sadly down by mile-stones as the city grows; stand by the river's side, seeing there, what no other eye may see; dwindling like a spirit to the city's eye, while he, Big Abel, waxes on sturdier by every street he walks; by every square he builds. . . . I know you love the grass that grows at times (by chance only, Lankey!) under horses' hoofs in swift thoroughfares. That often in the market-house, you sleep alone; or in a rolling boat upon the river; or underneath a tree out of the city's hateful breath, where you may get a sight of ancient stars. Often withdrawing too, into that little village of Manhattanville at the Island's farthest point—it is said—for long, long spells.

"Happiest, perchance, in that calm season of your own, the Indian summer time, when air and earth, and all things in and on them, share the gentle melancholy of your spirit, and nature shades her beauty and the brightness of her eye, in sympathy with you. Then Little Manhattan walks about, more master of the city for a little while, than sturdy Abel, even."

Undoubtedly, in some of the passages above quoted, and still more in many other parts of the book, the reader will observe an apparent imitation of Dickens, too striking not to attract his notice.—This is especially the case when he seeks to be humorous. It is true, however, that Mr. Mathews' style, as is evident by writings of his published before Mr. Dickens' works made their appearance in this country, had originally many of these peculiar characteristics. But it is equally true, we think, that since the appearance of those works, he has added qualities and tones from them, so as often to lay him quite seriously open to the charge of imitating an inimitable model. What is worse, he imitates him in his faults. Mr. Dickens is often affected—sometimes to an excessive degree. So is Mr. Mathews—in the same way—and more excessively still. Unhappily, while the former's affectedness is at least a natural ex-crescence, the latter's is put on, as it were,

by "malice prepense." Mr. M., like "Boz," must be exceedingly quaint and curiously humorous—in doing which he sometimes "slips up" and is *flat*—which is a misfortune. Such expressions—mere expletives—as "That's it!" "To be sure!" "As you might suppose!" "Be sure of that!" "Depend upon it!" "That was clear!" "No doubt of that!" etc., are constantly occurring, which every reader must feel are both affected and unoriginal.

And why, by the names of all the old Manhattanese, did not the facetious author give a different name to the dreamy, gentle, wavering, mournful-souled descendant of those dusky tribes, than "Lankey Fogle"!!!

Because, simply, Mr. Mathews had fallen in love with such odd names as "Fagin," "Quilp," "Newman Noggis," and must accordingly dub a young half-Indian with a like awkward and conceited cognomen. Mr. Mathews is a staunch champion for "International Copyright" and "native production":—why will he be giving us anything that *looks* like production, at second hand, of qualities, tones, sentiments, humors, conceits, or anything else characterizing any writer across the Atlantic? If we write at all, this side of the waters, let us do it in a way of our own. There is one thing, however, in the book, copied from no one; we know of no writer in the language who could lay claim to it, except Lord Timothy Dexter;—that is, the *pointing*. No method of dividing English yet devised suited Mr. Mathews. Dashes and commas were not stout enough to keep the quick limbs of his sentences apart. Semi-colons, for instance, where no one else would think of putting them—*e. g.*: "That Battery; near as you may think it, was a great way off; and it was," etc. "A street which oppressed them; with mighty leaden hats; copper serpents coiling about at the doors; cauldrons; bells; but chiefly stoves." Semi-colons for an inventory: *e. g.* "There were old men and old women; faded bachelors; faded spinsters; not in one costume; but all with a whim in their bearing; and a trick in the fashion of a cap," etc. Semi-colons brisk in a short sentence:—"Trotting up a hilly street; out upon Franklin Square; and there he was!" As for colons, they are plentiful as stumps in a western "clearing." They are ingeniously used for commas, with such attention to the properties of grammar as suits so original an

invention. *E. g.*—among adverbs: "Not grandly: but soberly: and with a decent gravity." Among prepositions: "There was no table in the cellar: nor in the parlor: nor the drawing-room: nor garret: but going to the hall you found a banquet stretched out: disdaining the rooms all about: up stairs and down." (!) Among conjunctions: "They knew Little Manhattan and Big Abel well: this strange old company: and gave place to them: and entertained," etc. Or, again: "In a gown, smiling: always smiling: and leaning on an anchor," &c. Among verbs: "Abel: Lankey: lingered," &c. Pray, what is nominative to "lingered?" Again: "There rose from that little house: a song: a simple song." Such impediments in the way of parts of speech—lawfully married—coming together, we have never seen. It is usually thought a verb cannot straddle a colon to get at a substantive. Such pointing, however, is everywhere through the book. Lord Timothy Dexter, we know, put several pages of commas, dashes, semicolons, colons, periods, asterisks, &c., at the end of *his* book, telling his readers to "peper and salt 'um as they pleased." Perhaps Mr. Mathews followed his plan, and the printer's devil, repenting, afterwards undertook to administer the "seasoning." The fact is, it is another instance of the affectation in the book. The writer may say, it is a *whim* of his; but there is no place for a whim in good writing.

In respect to the conduct of the sketch, the author's great fault is, we think, that he occupies too much time in mere narrative. By *mere* narrative, we do not mean everything embraced in it—the incidents and episodes and adventures—but the simple carrying on of the characters over a certain space or through a certain period. Mr. Mathews has, in our opinion, great command over the touching and exciting incidents that come up in his narrative, and if he would only dwell longer upon them, elaborate them more fully in his simplest style, he and his book would both be great gainers by it. He leaves us too abruptly, just as he begins to awaken our feelings, and sets us trotting again through his narrative. By lingering more, and somewhat extending his plan—having more, for instance, of the poor scholar and his mistress, and the little seamstress—he might have wrought about his two ideal personages a delicate story, filled with simple and affecting incidents, that would have interested every reader.

And it is in just such parts, we would add, that Mr. Mathews' style is more entirely his own. With all its faults and defects, however, "Big Abel and Little Manhattan" is worthy of being bought and read, for its really original conception,

for the simple skill with which the long-ing, the absorbing love for two utterly opposite modes of life, The Wilderness and Civilization, is idealized, and for a minute and curious picture of American Metropolitan life.

## TEAR DOWN AND BUILD OVER AGAIN.

BY WALTER WHITMAN.

HE who at some future time shall take upon himself the office of writing the early history of what is done in America, and of how the American character was started, formed, and finished—with some analysis of its materials, and the parts that entered from time to time into its make—will surely have much cause to mention what may be called "the pull-down-and-build-over-again spirit." This name is so descriptive, that it hardly needs any very elaborate explanation to tell what is meant by it.

Simultaneously with the departure of winter last April, (he feigned to go away, it will be remembered, in February, but it was only a trick of the old rascal, who came back again more grim than ever, as people's frosty noses soon bore witness, and as the warmth of spring penetrated the frozen ground, some of those subtle agencies that hold sway over the human will, penetrated five hundred New York hearts with a greater but very different warmth. Then these five hundred hearts prompted their owners to put their hats on their heads and walk forth, and view their tenements and lands, for they were men of substance. Then they communed with themselves, and said in their own hearts, "Let us level to the earth all the houses that were not built within the last ten years; let us raise the devil and break things!" In pursuance of this resolve, they procured workmen, purchased hooks, ladders and battering rams, and went to work. Then fled tenants from under roofs that had sheltered them when in their cradles, and had witnessed their parents' marriages—roofs aneath which they had grown up from childhood, and that were filled with the memories of many years. Then wept old men and old women, that they were not to die within the walls they had loved so long—rather a foolish weeping, too, when we consider

that by staying there a few hours longer their desire could have been accomplished. Then fell beams and rafters—then were unearthed the dust and decay of the past—then mortar and old lime, originally plastered by hands the worms had eaten long ago, filled Manhattan island with showers almost as pestiferous as the sand-clouds of Sabara. Then exulted each jolly Irishman who owned, or could hire, a dirt-cart and a patient horse—exulted, and was to be talked to by tax-paying citizens, not as a favor, but as one who could grant a favor. Then spoke hammer to axe, which spoke again to pick, while their triumphant din was answered by the melancholy fall of post, cornice and clapboard, and the piteous creaking of divorced floors and riven ceilings. Then was razed to the ground many a beam, rough-coated on the outside, but stout and sound at heart, like the men of the former age!

Good-bye, old houses! There was that about ye which I hold it no shame to say I loved passing well. It is true, ye had not the smart jaunty air, the brazen varnished look, of our modern buildings; but I liked ye all the better for it. Ah! how many happy gatherings some of ye have held in your capacious embrace, years ago! Births, too, and funerals as well, might ye tell of. Who, that now walks the pavement, or droops away on some distant shore, a gray-headed and care-worn man, yet was in your knowledge a fair-lipped baby, and a playful boy! What vows of love were breathed in your hearing, and passed into the air to dissolve—but passed also into human hearts, waking sweet echoes where now are the ashes of decay and death! Answer, ye crumbling walls! have ye heard, in the night's silence, no bitter groans from young men, sickened of life, even before they knew its darkest trials, and wearied with themselves and



their own follies? Have ye never witnessed solitary tears, shed by eyes the world got only glances of pride and coldness from? Has the moaning of sick children vibrated among your chambers, and the merry shout of the gay, and the smooth tongue of wedded affection, and the manly voice of true friendship? In awe and stillness have ye beheld death? And how sped the departing, then? Looked he back with a soul fainting at its former vanities, or cheerfully like a soldier over the conquered battle-field? Ah! deep were the lessons ye might teach, could these questionings be answered.

Some of our citizens—those of them who have the say on the subject—want old St. Paul's Church pulled down and built over again. When we come to consider how indecorous it is to worship our Maker in a place whose foundations were laid near a hundred years ago, and which has so many other larger and handsomer temples around it; when we reflect on the probable gratification of the Lord at having a new house, of such greater convenience and splendor than the old one; when we behold how much more likely Christians are to entertain humble, meek and heavenly thoughts in a church of marble, gilding, and showy carved work, than in one of a plainer make; when we remember how there are no starving poor in the world, no children growing up totally devoid of all moral or scientific instruction for the want of means; when we see that in the present happy and perfect state of mankind, there is little room for the exercise of that virtue whereof Christ said, "Inasmuch as ye refused it to the least of these your brethren, ye refused it to me;" when we are so clearly convinced that it is consistent for doctrines teaching love, simplicity, and a contempt for worldly show, to be expounded in a place whose corner-stones rest upon pride, and whose walls are built in vain-glory; when we bethink us how good it is to leave no land-mark of the past standing, no pile honored by its association with our storied names, with the undying memory of our Washington, and with the frequent presence of his compatriots; when we consider, also, what a sad blotch the present St. Paul's Church is, and how it mars the elegant beauty of Clirehugh's barber's shop on the opposite corner, and the chaste proportions of the broker's office on the other opposite corner; then we shall feel glad and delighted at the sagacity which has discovered

the pressing need there is for a better church, and eager to see the old one destroyed forthwith. Moreover, let there be no half-way work about it. Let those miserable old trees be cut away at the same time. What good do they there? Why cumber they the ground? There is one large elm in particular, whose shade falls darkly at midday on the graves of two men, soldiers who fought stoutly for that freedom we now enjoy. Let that old elm most especially be cut down. Its wild arms would split with horror from its blistered, weather-beaten trunk, to see the sacred tombs it has so long stood sentry over, desecrated by piles of brick and lime, for a spruce new church, for a generation that should "forget the burial-places of their fathers."

Not many months since, amid a small, slow-moving procession of white-haired ancients, we entered that building, in attendance on the funeral ceremonies of General Morgan Lewis, the chief officer of the Society of the Cincinnati. It was a chilling, solemn business. As we sat in one of the side pews, we looked around at the few withered men, the remnants of the Revolution, the testimony of old times, that were near us. Erect and stern, unbent with age, there was one whose eyes had been undismayed with the smoke of Bunker Hill, and who had faltered not after the hapless battle of Long Island. Those dim gray orbs, moreover, had gazed on that paragon of men, whose glory is almost more than mortal. "I was with him here," I heard him say, an hour afterwards, "to give thanks after the British had left the city." *With Washington there!* Oh, hallowed be the spot where his footsteps fell! Thrice hallowed be the temple where the purest prayers ever breathed from a patriot's heart, went forth towards Heaven!

There may be, and no doubt are, those in this utilitarian age, who will smile with contempt at sympathies like these, if offered as reasons why St. Paul's Church here, or any other such noble old building, shall not give place to modern "improvements." Thank Heaven! there are also those who can enter into such feelings, and act upon them. There are those whose ideas of beauty, worth and grandeur are not altogether fixed, as far as such things are concerned, on buildings of imposing height, great breadth, and showy exterior. There are those who would, in examining some crowded city, hold more attention for that spot in an

obscure street, where the early days of an undying genius were passed, than for the proudest palace, owned by the richest capitalist. There are those who would go farther to view even Charlotte Temple's grave, than Mr. Astor's stupid-looking house in Broadway—would bear more bother for a sight of the "Field of the Grounded Arms," than to scan—when it is completed—the famous Girard College. To such, greatness and goodness are things intrinsic—mental and moral qualities. To the rest of the world, and that is nine-tenths of it, *appearance* is everything. And yet, perhaps I am wrong. It is the world, which, in spite of itself, pays homage to every sacred spot where a great deed has been performed, or which a truly great man has sanctified by birth or death. Can Irishmen forget where their Emmet lies buried, though it should be marked by no gravestone, and the proudest columns loom up everywhere around? And how many centuries will bring the day when Mount Vernon is an indifferent spot to America?

Let us not be mistaken. We are by no means desirous of retaining what is old, merely because it is old. We would have all dilapidated buildings, as well as all ruinous laws and customs, carefully leveled to the ground, forthwith, and better ones put in their places. Whenever the untiring fingers of time have done their work of decay, there we would neutralize the danger with the hand of

reformation—imitating thus the great copy of Nature, the mother of the only wise philosophy. No friend are we to the rotten structures of the past, either of architecture or government. It is only where upstarts would pull down something noble, stout and true, that we cry, "Stay your hand, leveler!" It is only when honorable and holy memorials of the good which the past has sent us, with its many evils, is jeopardized, that we would raise our voice in warning and indignation. To all destruction which is a necessary precedent to man's glory, comfort, or freedom, we say, "God speed!" and are willing to lend our humble strength withal! This, but no more. What we have that is good, that is fully equal to our present capacities and wants, that, if destroyed, would doubtless be replaced by something not half as excellent: let it stand!

And I must add—and I hope it is no spirit of harshness—that whoever is opposed to *such* conservatism, whoever moves under the impulse of a rabid, feverish itching for change, a dissatisfaction with proper things as they are, through the blindness which would peril all in the vague chance of a remotely possible improvement, has something of the same mischief of the soul that "brought death into the world, and all our woe;" a prompting which, even though it comes to put up a new church, comes from that father of restlessness, the Devil.

#### THE EIGHTEENTH ANNUAL FAIR OF THE AMERICAN INSTITUTE.

WE devote the few pages which remain, to a rapid survey of the *Exhibition* of American genius, as employed in moulding to shapes of utility and beauty the *matériel* which a beneficent Providence has scattered in such profusion over this great country.

The American Institute, after a long struggle, now stands on a permanent basis. Such institutions—combinations of intellect, science and industry—are eminently patriotic: they are the friend of the agriculturist, the guide of the manufacturer, and the patron of that invention and labor which would make this confederacy self-sustained and truly independent; increasing its own civilization, and

in time directing even other nations in the highway of physical and—almost as a consequence—of moral and intellectual improvement.

The Institute is well able to plant its appeal for support on facts. It need not even point to what it can do, but to what it has done. The address delivered, at the opening of the Fair, by Professor Mapes, fully confirms all which we here assert. He says: "After eighteen years of active industry, it (the Institute) has established a correspondence with every state and county in this Union. Its services to the agriculturists are freely admitted by farmers throughout the country. The agricultural department holds yearly con-

ventions, bringing together the results of agricultural experiments from every section of the country; and more queries and enigmas have been definitely settled by it than by all other sources for disseminating practical knowledge in this important branch of industry. On the first and third Tuesdays of each month, the Farmer's Club holds its meetings at the rooms of the Institute; and at these meetings practical farmers present specimens of products and describe modes of culture. Their remarks are eagerly caught up by the reporters of the various agricultural papers, and thus disseminated throughout the country. The Institute showed the Virginians how, by a most simple process, they could restore their worn-out lands: lands in the old commonwealth, which a few years since could be purchased for five or ten dollars per acre, now command from forty to one hundred dollars per acre. It is altogether probable that the improvements in our agricultural products, from the causes already stated, are more than one per cent. on the whole amount of the crop; and as this amount, exclusive of the tobacco, sugar, cotton and rice crops, is some seven or eight hundred millions, the Institute has benefited the country at large, in the department of agriculture alone, several millions. The American Institute first proposed the geological survey of New York. Congress is at every session indebted to the Repository for statistics on almost every subject connected with the public welfare. There is a permanent committee on arts and sciences, in which are men who stand in the front rank of natural philosophers and engineers. Almost every invention of supposed utility is submitted to them by the inventors for investigation; their favorable report *being deemed sufficient to authorize capitalists to invest their money in the project*. No instance can be shown where the committee has given an opinion which proved fallacious. The Repository contains two hundred and fifty models of useful inventions. The Institute has the subject of silk culture under the most vigorous examination. One of its members introduced, from Italy, the *morus multicaulis*; another member has pre-

sented one thousand dollars as a fund for the encouragement of the culture of silk. In a single year this country imported silk goods to the amount of twenty-three millions of dollars. The Institute desires to keep this sum at home.

The Institute has organized a school for the Arts of Design.

The necessity of a school for the Arts of Design, as applied to the Mechanic Arts, has long been felt in this country. In France the Arts of Design form a part of the common school education, and in consequence, the whole world is put under contribution for French *patterns*. The quality of our woods is better, and our workmanship equally good with the French, but the superiority of their designs enables them to sell French furniture in our markets at double the prices of our own. They send us a new pattern of calico at 75 cents per yard, which we imitate in a few weeks at 12½ cents per yard; but in these few weeks our market is supplied at a profit to the French manufacturer of many times the whole cost, and simply for the want of a school for the Arts of Design.

The Shipwreck Society had its birth in the American Institute. It has also introduced a most valuable system of coast signals. It would be an endless task to portray the benefits which have resulted from yearly Fairs. What is the character of American manufactures now as compared with those exhibited at the first Fair? Look at the cloth-room, and see fabrics which would do honor to any English manufacturer of five years ago. A few years since, our dyers were entirely unable to compete with the English and French dyers; now they are surpassed by none. Instead of wearing American cloths from patriotism, we do it now from choice: they are better than foreign cloths of the same cost. Examine the cotton and other fabrics, and it is with some difficulty you can believe that they are the product of American looms.\*

Our improvements in hardware and cutlery are equally great. What surgeon now thinks of sending abroad for his instruments? what tailor for his shears? None: they are better made at

\* Cloths, Cassimeres and various woollen fabrics, were sent from Franklin Mills, Skeeneteles; Middlesex Mills, Lowell; Cozzens', Providence; Millbury Mills; Woonsocket Falls, Ware and Leeds Mills. The specimens equaled anything of the kind from Europe. Those who take an interest in American manufacturers, and were prevented from attending the Fair, can examine the fabrics at 9, 30, 31, and 63 Pine street, and 16 Exchange.

home. Look at the ladies' hats now in this room: what leghorn can equal them in beauty or quality? Who now sends to England for cut glass, and what but the emulation arising from our Fairs has reduced its value to the present low prices? Some of the best specimens in our exhibition are brought from beyond the Alleghany Mountains by the manufacturers. Look at the girandoles and candelabras exhibited, and recollect the entire impossibility of procuring such articles a few years since.

Such is a rapid condensation of Mr. Mapes' well written and important discourse. The Institute happily committed to his hands the preparation of the opening address; he has been one of its firmest supporters, and his opinions receive, as they are well entitled to, the regard of the intelligent. The cause of Agriculture has a most eloquent champion in Mr. Meigs, a member of the Institute: we quote from his address also:

"What was England for fifteen hundred years? Her history will show you, that her population never exceeded six millions during all that time. In 1509, gardening began to be of some importance in England. Before that time vegetables were imported from the Netherlands. Then began the culture in England of cabbages, gooseberries, musk-melons, apricots, garden roots, &c. The damask rose was introduced by Dr. Linacre, physician of Henry VIII. In 1526, roses were first consecrated as presents from the Pope! Hops from France! Pippin apples, by Leonard Mascall, in 1525. Corinthian grapes, now called currants, from Zante, in 1555. Musk roses, and several plums from Italy, by Lord Cromwell. July flowers, and carnations, in 1567. Tulips from Vienna, in 1578. Asparagus, oranges, lemons, artichokes, cauliflowers, beans, peas, lettuce, in 1660. Then began the population of England to grow. Then began the creation of the farmer. Then arose the delightful dwellings of the yeomanry of England, on the domains which, for more than a thousand years, had been occupied by feudal vassals, styled in the old law books *villeins*, over whom, in their subject condition, the eleven hundred military castles of England had for so many ages frowned in aristocratic power! Now behold the magic changes wrought by the power of farm and garden. You see now the annual jubilee of those noble interests, attended by all the gentlemen, lords and

ladies of the British empire. Victoria (to her credit I proclaim it) personally shows to her subjects the example of love and regard for even a poultry yard!

"Turn your eyes to France! Louis Philippe is the protector of the Royal Society of Horticulture, of Paris—thus giving his fine example to all our patriotic citizens who are now so nobly engaged in forming everywhere *Farmers' Clubs*, which, by thus condensing the theories and experience of masses of men, will find those truths which are vital to a powerful progress in Agriculture as well as in any other cause. See the Sultan of Turkey, within a few months past, sending commissioners into every district of the Mussulman Empire, to inspect the condition of farmers, to lend them money to buy stock and farming tools, to give them the most valuable seeds, and ordaining that no man, while engaged in cultivating the earth, shall be arrested for debt!

"Look for a moment at the value of cultivation. Spain, for a long time, annually received from her mines in South America, some thirty millions of dollars in gold and silver. Spain, which had before that time a rich agriculture and a lofty name, now became proud and lazy; her *Hidalgos*, with pompous step, paced the prados of her cities, disdaining all labor. Spain dropped her spade and hoe—spurned the plough—and you all see the result.

"England, by her parliamentary returns last year, shows the value of agriculture for that year to be three thousand millions of dollars; or as much, in one year, as the mines of America had given Spain in a hundred years."

Mr. Weslervelt, another orator who addressed the Institute, remarked:

"Sciences are reduced to systems, and systems, in their turn, are reduced to the comprehension of the plainest understandings.

"But these, like everything else, are not properly attained unless by ceaseless labor and perseverance; and like everything which is susceptible of an intrinsic value, they are usually worthless without the physical and intellectual industry necessary to their accomplishment.

"Genius, it is true, may sustain and enliven everything within its sphere; but it is only where true knowledge is at the foundation, that genius proves of real advantage to its possessor."

The exhibition of articles was full and magnificent; miracles of luxury and art



were gathered in every avenue; here the ponderous but elegant machinery of steam threw a hundred new inventions into dazzling motion; there sparkled jewelry of the most exquisite finish; here the eye was surprised by the gossamer fabric from the fair hands of an American woman, fit to float over the snow-white form of the IDEAL; there stood a machine which would supply the labor of a hundred hands; and yonder the fruits of the earth hung in profuse clustering—

"So rich and ripe  
That one was almost tempted to forgive  
Our primal father's first and greatest sin."

Among the machines, we observed several of very great importance. "The Endless Self-Computing Scale" is a production which exhibits uncommon genius, and industry, and patience. The Scale, (the result of three years' incessant labor,) we are told, is designed as an assistant in all arithmetical calculations. The rapidity, the simplicity and accuracy of the results, have surprised our best mathematicians. It consists of a logarithmic continuation of numbers, arranged in two or more circles, one of which is made to revolve within the other; which process constantly changes the relations of the figures to each other, and solves an infinite variety of problems. As the inventor tells us, its chief advantages are: 1st. A complete saving of mental labor: 2d. A great saving of time: 3d. Complete accuracy. The results of the computations in this Scale are infallible; errors, except through sheer carelessness, being impossible: 4th. Mental improvement. By this Scale a knowledge of the philosophy of numbers, and their relations to each other, is immediately obtained.

The lines on both parts of the Scale are precisely alike. That part of the Scale which revolves is called "*the circular*," and the other is called the "*fixed part*." The lines represent the exact position of the different figures, and are generally numbered. The longest lines are numbered 1, 2, 3, &c., and represent 1, 2, 3, &c., 10, 20, 30, &c., or 100, 200, 300, &c., or 1-10, 2-10, 3-10, &c., according to the nature of the problem to be solved. The next sized lines represent 11, 12, 13, 21, 54, &c., or 110, 120, &c., and are nearly all numbered. The shortest lines represent the amount or quantity, when it is composed of three figures, as 101, 102, 125, &c., or 10-1, 13-5, &c., or 1-01, 1-25, &c.; but on the Pocket Scale these lines are not numbered.

*To find 105 on the Pocket Scale.*—Call the large 1, 100; then count five of the

short lines toward 11, and you have the point for 105.

*To find 224.*—First find 22, (the first two figures in the amount,) then count the short lines between 22 and 23; the first short line represents 223; the next short line 224.

*To find 645.*—First find 64, (the first two figures in the amount,) then the only short line between 64 and 65 represents 645.

*To find the circumference of a circle from its diameter, or its diameter from its circumference.*

**RULE.**—Place letter c (found on the circular) opposite fig. 1; then the figures on the fixed part are diameters, and those on the circle are circumferences. Opposite each diameter is its circumference.

**Example.**—What is the circumference of a circle whose diameter is 9 inches?

Place c opposite fig. 1; then opposite 9 is 28-2, (28 inches and 2 tenths,) the answer.

#### *To Apportion Taxes.*

**RULE.**—Place the whole tax to be raised, found on the circular, opposite the whole valuation; then opposite each man's valuation is his tax.

**Example.**—A tax of \$1,500,00 is levied on a valuation of \$300,000,00; what is a man's tax whose valuation is \$700,00?

Place 1500 opposite 200,000; then opposite 700 is \$5,25.

[We recommend the invention to Sir Robert Peel.]

The ingenuity and utility of Mr. Polman's Scale will be easily perceived.

There was a beautiful invention on exhibition of a "Year Clock!" We examined it with some attention, and quote a part of a succinct description:

"The improvements of the invention consist in the novelty, yet simplicity, of the movements. There are but four principal wheels. The motion is produced by weights in the 30 day clocks, and by a main spring wound upon a fusee in the year clock. The power of the weight or spring is retarded in this clock, and made to retain regularity in its motion, by the ingenious arrangement of the escapement and pendulum. When you look at the clock, you perceive a gilt ball four and a half inches in diameter at the end of a small steel rod. It revolves three times and a half one way, and the same number of times the other. At the upper end of this rod is an ingenious and delicate double lever movement, reaching to the escapement, which it catches and leaves without any sensible friction. The spring then reacts upon the ball, aided by its own gravity, and the rotary motion is continued, the escapement controlling the pendulum as in other clocks. This ball is hollow and has an internal apparatus, by which its rotary

motion is regulated. There are four small weights at right angles to each other, two are mounted upon a wire, which is a horizontal diameter of the globe. This wire has on it the thread of a screw, and each turn of it produces an exact movement of the weights to or from the centre, which can be regulated to the smallest fraction of time. The two other weights are fastened to a semi-circular band, composed of three different metals, the contraction or expansion of which also changes their position within the ball. The whole interior arrangement ensures, it is believed, entire uniformity of motion in the globe.

"It will at once be seen, that the friction of the common pendulum is avoided. The revolutions of the ball are found by experiment and observation to be isochronal."

It is worthy of particular notice, that the same combination of machinery, extended, would keep a clock in motion any number of years.

The Tobacco Trade was well represented by Mr. J. Anderson.

More immediately interesting to us, however, were the various patented machines, for use in agriculture and manufacture—for agriculture especially we feel to be the great interest of this country. Among them was a contrivance, of a simple nature, to cradle wheat by the labor of horses. It is said to have been in use on many farms—working admirably, since the cradling is rapidly done, and what is more, there is comparatively no loss of grain by shelling. In cutting ripe grain, probably three per cent. has usually been lost upon the ground. For many other agricultural implements there were improved models. We noticed, too, an improved machine, by which cotton may be spun to the extremity of fineness, with an immense saving of labor. Every improvement in cotton machinery will be esteemed of great value. That Commerce, also, might not be unrepresented, there was a powerful machine for loading or unloading vessels with great dispatch. It has been effectually proved.

Perhaps, however, the most important of all the inventions exhibited, was a machine for rotting hemp by steam. Hemp, by this process, can be thoroughly rotted in four and five days, with the very great advantage of retaining a large portion of the natural oil in the weed, which water-rotting quite washes away, but which, if retained, adds strength and glossiness to the fibre. In addition to this, there was a machine with such improvements for breaking and dressing the

hemp, as to do entirely away with the slow and expensive toil of the old process. It appears to us, that these two machines are of infinite value to this country. Every section of the North and East, but more especially of the immense West and North-West, from Virginia and Tennessee, to the forests of Maine, the boundary Lakes, and the mineral regions of Wisconsin and Iowa, are capable of the abundant production of hemp, and, perhaps to an equal amount, of flax. These products might easily be made one of the great staples of the North. They would have become so already, we are convinced, if the process of rotting and dressing the article could have been quickened. This, we believe, is now accomplished, and with such a quality in the hemp prepared, as to command for it, we are told, a higher price at the Navy-Yard, than any dressed by the old method obtains. If this process shall prove to be subject to no important disadvantages, we know of no reason why hemp and flax should not be produced in this country, for consumption at home and abroad, in as great quantities as is the cotton of the South.

And all this—combining machinery, invention, fruits, grains—all this is *American*—the product of *American* soil, *American* genius, *AMERICAN* industry. In Colonial times—just before the Revolution—a British minister would have prevented the manufacture of even a *hob-nail* in America: now we can vie with England in almost all the productions on which she prides herself. A few years ago, and some Americans would have kept this mighty land a vassal, kneeling at the feet of the Old World, and asking of her nearly all the luxuries and many of the comforts for our *cis-Atlantic* life: now she has broken off the chain, and stands up with a sublime aspect, in her own strength—for it is always sublime, when a nation relies upon herself. And this country is now dependent on no other: her looms are sounding in a thousand villages; her streams are baptizing myriad wheels; her artisans are making the cavernous places of the earth to echo the shout of the strong man, who binds Nature captive to the rushing car of Civilization; her sons, in a word, have written, published and established a second Declaration of Independence. We needed "protection"—we partially obtained it—let every citizen, however befooled hitherto by Democratic reasonings, look at the results!

## CRITICAL NOTICES.

*Journal of the Texan Expedition against Meir.* By Gen. THOMAS J. GREEN. New York: Harper & Brothers.

As to this book, we must confess there are many reservations to be made. When regarded in a critical sense, and as contrasted with the literary standards of the day, its position is a very dubious one. So far as any oration of style which could pretend to verge upon excellence is concerned it is absurd; for it has absolutely nothing of such graces to recommend it. But as a bare and unpretending recital—if it were only consistently so—of incidents in themselves intensely tragic and abundantly exciting, the book is interesting. It would have been to a singular degree more so, but for the constant intrusion, on the part of the author, of a determination not only to prove himself a *fine* writer and elegant scholar, but as well a Texan Hero in his own person. He does not pause at this last climax even, but insists on being recognized in his own narrative as the very Bayard of Texan heroes. These two wretched dandyisms greatly mar the spirit and effect of the book. "*General Green of the Texan Army*," is made the head of this offending against Mexico—the centre and circumference of all that is chivalric, impetuous and stern that occurred throughout the whole of its eventful consequences. General Green having, by whatever accident, reached New York first, and earliest placed his MSS. in the hands of publishers, has the first to say with regard to the affair, and is determined that the claims of said General Green shall be *fully* set forth in advance. There is something closely verging upon the bare-faced pertinacity of a barber's puff, in the spirit with which this point is set forth. But the truth is, we know this Gen. Green to be a gallant man—quite capable of doing all he represents himself as doing—and we find a partial excuse for this bluff ill-savored egotism in the rugged independence of forms, and plain-speaking impulsiveness, peculiar to his associations and adopted country. With all that may be offensive to ears polite in its tone, we are glad to recognize the book, in the main, as original and purely Texan.

Nobody but a Texan could have written it, and no other than Texan life would have given rise to its incidents. When the General forgets that he *must* be a fine writer or is *the hero* of the story, he is a graphic, off-hand and pleasant narrator. He talks like a Texan himself then, and his characters are true Texans, with all the strength of ready, desperate passions, and cool fantastic daring.

An example in point we will extract—premising that after the successful charge of the Texan prisoners upon their guards at Salado—their escape and final recapture—an order for them to be decimated was received from that bloody Santa Anna. The passages are touching, and give a favorable idea of the bold and generous qualities of these adventurers.

"The decimation took place by the drawing of black and white beans from a small earthen mug. The white ones signified *exemption*, and the black *death*. One hundred and fifty-nine white beans were placed in the bottom of the mug, and seventeen black ones placed upon the top of them. The beans were not stirred, and had so slight a shake that it was perfectly clear they had not been mixed together. Such was their anxiety to execute Captain Cameron, and perhaps the balance of the officers, that first Cameron, and afterwards they, were made to draw a bean each from the mug in this condition.

"He said, with his usual coolness, 'Well, boys, we have to draw, let's be at it;' so saying, he thrust his hand into the mug, and drew out a white bean. Next came Colonel Wm. F. Wilson, who was chained to him; then Capt. Wm. Ryan, and then Judge F. M. Gibson, all of whom drew white beans. Next came Capt. Eastland, who drew the first black one, and then came the balance of the men. They all drew their beans with that manly dignity and firmness which showed them superior to their condition. Some of lighter temper jested over the bloody tragedy. One would say, 'Boys, this beats raffling all to pieces;' another would say that 'this is the tallest gambling scrape I ever was in,' and such like remarks. None showed change of countenance; and as the black beans failed to depress, so did the white fail to elate. The knocking off the irons from the unfortunate alone told who they were. Poor Robert Beard, who lay upon the ground by exceedingly ill, and nearly exhausted from his forced marches and sufferings, called his brother William, who was bringing him a cup of water, and said,

'Brother, if you draw a black bean, I'll take your place; I want to die.' The brother, with overwhelming anguish, said, 'No! I will keep my own place; I am stronger, and better able to die than you.' These noble youths both drew clear, but soon after died, leaving this last Roman legacy to their venerable parents in Texas. Several of the Mexican officers who officiated in this cruel violation of their country's faith, expressed great dissatisfaction thereat, and some wept bitterly. Soon after, the fated were placed in a separate court-yard, where, about dark, they were executed.

"Poor Major Cocke, when he first drew the fatal bean, held it up between his forefinger and thumb, and with a smile of contempt, said, 'Boys, I told you so; I never failed in my life to draw a prize;' and then he said to Judge Gibson, 'Well, Judge, say to my friends that I died in grace.' The Judge, much affected at this last parting, showed it from his tears. The major replied, 'They only rob me of forty years.'

"Poor Torrey, quite a youth, but in spirit a giant, said that 'he was perfectly willing to meet his fate; that for the glory of his country he had fought, and for her glory he was willing to die;' and turning to the officer, said, 'After the battle of San Jacinto, my family took one of prisoner youths, raised and educated him, and this is our requital.'

"Edward Este spoke of his fate with the coolest indifference, and said that he would rather be shot than dragged along in this manner. Cash said, 'Well, they murdered my brother with Colonel Fannin, and they are about to murder me.'

"J. L. Jones said to the interpreter, 'Tell the officer to look upon men who are not afraid to die for their country.'

"They one and all invoked their country to do both them and herself justice. Capt. Cameron, in taking his leave of these brave men, and particularly of Turnbull, a brother Scotchman, with whom he had been in many dangers, wept bitterly, and implored the officers to execute him and spare his men.

"Just previous to the firing they were bound together with cords, and their eyes being bandaged, they were set upon a log near the wall, with their backs to their executioners. They all begged the officer to shoot them in front, and at a short distance; that 'they were not afraid to look death in the face.' This he refused; and to make his cruelty as refined as possible, fired at several paces, and continued the firing from ten to twelve minutes, lacerating and mangling these heroes in a manner too horrible for description.

"During the martyrdom of these noble patriots, the main body of our men were separated from them by a stone wall of some fifteen feet high, and heard their last

agonized groans with feelings of which it would be mockery to attempt the description. The next morning, as they were marched on the road to Mexico, they passed the mangled bodies of their dead comrades, whose bones now lie bleaching upon the plains of Salado, a perishing remembrance of exalted patriotism, but a lasting one of the infamy of their President, Sam Houston, who caused them to be executed as robbers and marauders upon Mexico."

*Sparks's American Biography.* Vol. XVI. Second Series, Vol. VI. Boston: LITTLE & BROWN. 1845.

The sixteenth volume of this valuable series of minute biographies of persons eminent in our history, contains three unusually interesting sketches, and of characters as unlike in qualities and course of life as could well be selected.

The first is a succinct narrative of the life and services of Ezra Stiles, President of Yale College from 1788 to 1795. It is from the pen of Professor Kingsley, of Yale College, and is drawn up with the facility, clearness, apt brevity, and command of strong, pure English, for which the writings of Mr. Kingsley have always been remarkable. The character is worthy of the biographer. President Stiles was one of the most distinguished men whom this country produced in the eighteenth century. He was a true son of New England—more liberal, indeed, in his religious sympathy than were most of the Puritan Fathers, but a simple and firm defender of Scripture faith, and especially a firm champion for colonial liberty. "A more constant and devoted friend," says Chancellor Kent, in his Phi Beta Kappa oration, (at New Haven, 1831,) "to the Revolution and independence of his country, never existed. He had anticipated it as early as 1760; and his whole soul was enlisted in favor of every measure, which gradually led on to the formation and establishment of the American Union." A confirmation of this early prescience and anxiety as to the destiny of the American colonies, may be found in his public addresses, and letters to foreign correspondents, written many years before the Revolution. In literary and scientific attainments he was among the foremost men of his times. His foreign correspondence, on various subjects, was very extensive. He was a friend of Dr. Franklin's, through whom he obtained a diploma from the University of Edinburgh. "In comparatively a short time," says Prof. Kingsley, "he read, and gained a good knowledge of the Hebrew Scriptures, the Chaldee of, the Old Testament and the Targums, and made no inconsiderable progress in Syriac and Arabic. He read portions of the Talmud, dipped into the Per-



sic and Coptic, and some other Oriental tongues."—"He was particular in noticing whatever came to his knowledge in the department of the sciences. His thermometrical and meteorological observations were extensive and exact. Indeed, it would be difficult to mention any subject of moment in which he did not, as occasions occurred, take an active interest." The testimony of Dr. Channing may be added, that "to an enlarged acquaintance with physical science he added extensive researches into philosophy, history and antiquity; nor did his indefatigable mind suffer any opportunity to escape him of adding to his rich treasures of knowledge." "Take him for all in all," says Chancellor Kent, in the close of the address referred to, "this extraordinary man was one of the purest and best-gifted men of the age."

The second sketch in the volume is one, probably, of greater interest to the general reader, as an affecting account of uncultured genius struggling with misfortune. It is a history of the struggles, adventures, experiments, triumphs, disappointments and solitary death, of John Fitch, who certainly deserves to be put among the first men this country has produced, for inventive talent and singular energy of character. We have already published a brief statement, in which the honor of first inventing (in 1784) the *right kind* of machinery, and *successfully* applying it, for the propulsion of water-craft by steam, was claimed for this extraordinary man. This sketch of his life and labors, by Charles Whittlesey, establishes the claim beyond question. It is besides, as a narration, singularly simple and touching, as became the subject, lucid in style, and skillful in its statements and reasoning. Of Fitch's captivity by the Indians, and long stay among the North-Western Tribes, no account is given for want of room. It would furnish a subject for a very interesting sketch by itself.

The third brief biography in the volume is of the celebrated Anne Hutchinson. No woman in the early history of the colonies occupies a larger share, or is, as a character, more truly historical. The account of her life, character, and protracted controversy with the Puritan churches, occupies half the present volume.

This series of American Biography is furnished from the ablest pens in the country, and should have a place in every library.

#### *Wiley & Putnam's Library of Choice Reading*

We have only space at present to chronicle the appearance of these volumes, reserving for another opportunity several full and elaborate reviews of the most important. Of one particularly, as the entrance upon a new department of the

library, and for various intrinsic considerations, we intend to write at length—the volume of selections from the old English Prose writers, Jeremy Taylor, Barrow, South, Fuller, Milton, and the rest—edited by Basil Montague, the editor of Bacon's works and writer on Criminal Law. This volume is followed in the series by CHARLES LAMB's Old English Dramatic writers who flourished about the age of Elizabeth; they breaking ground for the library in the two divisions of prose and poetry in a period, including Shakspeare, the most prolific in genius the world has ever seen. The next prose work will be Izaak Walton's lives of Donne, Herbert, Wotton, Hooke and Sanderson—altogether a truly important enterprise, and one deserving of the highest encouragement by the press, when it is considered that these works are published for the mass in a popular series, and when we remember the character of the popular literature which has so recently preceded them.

In the new volumes of the series will also be found two additional volumes by Hazlitt, of the Table Talk and the Lectures on the Comic Writers, of whom he wrote with as great a zest as Lamb did of his Old Dramatists. The Comic Writers includes the paper on Hogarth.

The Head and Heart, and the Proverbial Philosophy, complete the collection of the leading writings of Mr. Tupper, one of the most popular authors, and on many accounts deservedly so, who has appeared in the library.

The publishers are also turning their attention in another direction. They have commenced the publication of a FOREIGN LIBRARY, uniform in appearance with the other, the design of which is to include the best books of the foreign authors—those only which are worthy of permanent preservation. The lively personal and historical memoirs of Benvenuto Cellini have been issued, and are to be succeeded by Victor Hugo's brilliant Tour on the Rhine, Theodolf, by the author of Undine, Schiller's Writings, &c. &c.

*The Wigwam and the Cabin.* By W. GILMORE SIMMS. Wiley & Putnam's Library of American Books.

This volume is a collection of tales, contributed by Mr. Simms to sundry Annuals, with various degrees of merit. "Grayling; or Murder will out," though "highly spoken of," we are not particularly pleased with. "The Two Camps" is much finer—more "consistive and satisfactory," as the clown says in the Old Play. It is certainly a good backwoods story. "The Last Wagon" is, to our mind, better than either. It is original, picturesque, and beautifully told. "The Snake of the Cabin," and "Jocassie," are valueless. They amount

to nothing, and leave no distinct impression—a very sad defect in a story. "The Arm-Chair of Tustenuggee," we remember to have read with great delight many years ago, nor have we ever forgotten it. It is capital in its way;—as is also "Okatibbe," illustrating in strong, but simple colors, the two or three noble traits most peculiar to the untutored Indian. Mr. Simms' greatest excellence is the purity and directness of his style. He is sometimes diffuse, but he never fails to keep up the interest of his reader, to the end of what he has to say. With all this, however, these tales but prove what we were convinced of before, that he is a man of fine, ready talent, but no genius. He shows very little invention anywhere—and without power of invention, such as makes itself felt, and that in a manner never to be forgotten, there can be no claim to the great title of GENIUS. He affects humor, also—but not always with very great success. He is, on the whole, what the English would call, a very clever writer. Probably he would not, himself, lay claim to any higher title—which has, indeed, belonged to many eminent men.

*The Autobiography of Vittorio Alfieri, the Tragic Poet. Translated by C. EDWARDS LESTER. No. V. Medici Series of Italian Prose. New York: Paine & Burgess.*

The Biography of this remarkable man—written by himself—is quite as peculiar and original in every sense as his own character. It is the model for books of the sort. Full of magnanimous frankness, it as boldly and unhesitatingly unveils to us the individual in all the harsh and rugged fierceness of his animality, as in the delicate and womanly tenderness of his fitful and wayward nature. There is no disguise even when the revelations are debasing to humanity. Though from the general laxity of Italian morals, many things are exhibited which are, to us, absolutely shocking, yet they are necessary to the two-fold purpose of the book—to give us insight of the Poet and a knowledge of Italian manners—of the times in which his vehement and masterful character was formed. His wonderful Tragedies fired the hearts of all Europe, and are as singular in power—as wild above rule or art—as was his individual nature.

Mr. Lester says in his dedication, "You well know Alfieri has been called 'Il Poeta intraducibile.' His Autobiography, too, is the most *untranslatable* of all his works." That the Poems and Dramas of Alfieri, from the peculiarity of his style, and the idiosyncrasy of his character poured into and through whatever he wrote, can never be adequately rendered into another tongue, we are very well aware; but that his Autobiography or any other of his prose works, is still more "untranslatable" than

his plays, we do not believe, because such are never the relative difficulties between rendering the prose and verse of any foreign writer. From the character of the man, however, the obstacles in the way of a satisfactory version of this work are considerable; and credit is due, generally, for the manner in which they have been overcome. There are some uncalled for and inelegant examples of "I'll," and "didn't" for "I will," "did not," and two or three sentences we noticed, involved and awkward, if not ungrammatical. But we could not help feeling both regret and displeasure, that the general excellence of his translation should not have appeared in the very few pages of Mr. L.'s own writing. His introductory remarks are written with extreme carelessness. In the space of one half page there are no less than three unpardonable blunders in grammar. First:

"Voltaire, foul with idle gallantries, had converted the heroes of Rome and Greece into so many *Louis XIV.*, with powdered wigs, full of despotic notions, &c."

If used in that place at all, though awkward at the best, it should read "*Louises* the Fourteenth." In the very next sentence, we have—

"In Italy, Martelli had tried to shake off the yoke of servile imitation of Greeks and Romans, and had put upon his neck a more shameful one, that of *France*, from whom too he had even borrowed *their* fastidious cadence of verse."

Here it should plainly be either "the French," instead of "France"—or "her" instead of "their." In the fifth sentence after this, we have:—

"The exciting and the terrible, which *are* so grand and so awful in every movement of Shakspeare's Macbeth and Alfieri's Saul, *was* as much beyond the conception, as the painting of Maffei, Martelli, and Conti."

In this passage, either "are" or "was" is wrong; or rather, "are" is right, and "was" should be "were" to correspond—according, at least, to certain old English rules. We beg the "Introducer of Italian Literature" to be somewhat more careful; for we do hail this effort to make the works of these noble writers known to our countrymen with great interest, and are quite unwilling to have the enterprise marred by any defects.

Wolff's Bokhara Mission—a book as singular as its author—Crabbe's English Synonyms, Mandeville's Elements of Reading, The Mysteries of Tobacco, the first numbers of Harper's Cerographic Atlas, by Morse, with several Annuals and other works, from different publishers, will be noticed in our next.